Annual Report

Director of Investigation and Research

Competition Act

for the year ended March 31, 1987
to the Hon. Harvie Andre, Minister

Consumer and Corporate Affairs Canada
Consommation et Corporations Canada

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January 26, 1988

The Honourable Harvie Andre, P.C., M.P.,
Minister of Consumer and Corporate Affairs,
Ottawa

DEAR SIR:

I have the honour to submit, pursuant to section 99 of the Competition Act, the following report of proceedings for the fiscal year ended March 31, 1987.

Yours very truly,

Calvin S. Goldman
Director of
Investigation and
Research

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CHAPTER I

INTRODUCTION AND SUMMARY OF THE COMPETITION ACT

1. Introduction

(1) *Purpose of Act*

This report is made pursuant to section 99 of the Competition Act [formerly section 49 of the Combines Investigation Act], chapter C-23 of the Revised Statutes, 1970, as amended as of March 31, 1987, which provides as follows:

> 99. The Director shall report annually to the Minister on the proceedings under this Act, and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days after he receives the report on which that House is sitting.

The purpose of the Competition Act as set forth in section 1.1 is to maintain and encourage competition in Canada. Section 1.1 of the Act gives recognition to this goal as a means of: promoting the efficiency and adaptability of the Canadian economy; expanding opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada; ensuring that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; and providing consumers with competitive prices and product choices. To this end, the legislation seeks to eliminate certain practices in restraint of trade, and to overcome the negative effects of concentration, both of which tend to prevent the economic resources of Canada from being used most effectively to the advantage of all. The Act also contains provisions against misleading advertising and deceptive marketing practices.

As in other years, members of the public this year sought from the Director of Investigation and Research relief against alleged violations of the Act by suppliers or competitors who, they said, were jeopardizing the solvency of their businesses. To such complainants it was stressed that the machinery of the Competition Act is not designed to provide quick relief in such situations. Its purpose is primarily to protect the competitive process and maintain a competitive environment over a longer period. Although efforts are made to expedite particular inquiries, in some circumstances the time required to properly complete an inquiry may be too long to assist such complainants with their immediate problems. The Director, however, brought to the attention of such complainants the provisions in section 31.1, described hereafter, which permit any person to take proceedings in the civil courts to recover damages they have suffered as a result of certain types of conduct prohibited by the Act.

(2) *Stage I and II Amendments*

Until January 1, 1976, the Act had general application only to commodity production and trade, although certain services in connection with commodities and the price of insurance were also covered. In 1976 the Act was made applicable to pure services by virtue of the Stage I amendments, in the planned two-stage revision of the Act. As a result of the inclusion of services, all economic activities are now subject to the Act except those specifically exempted in whole or in part by the Act (i.e., collective bargaining activities, amateur sports and securities underwriters) or exempted as a result of other legislation (e.g., the Farm Products Marketing Agencies Act).

On June 19, 1986, the Stage II amendments to the Act came into force, with the exception of the provisions relating to prenotification of large merger transactions. (These were proclaimed in force together with supporting regulations on July 15, 1987.) The amendments represented some fundamental changes to the former law and its procedures. The Competition Tribunal Act created a new adjudicative body, the Competition Tribunal, which succeeded the Restrictive Trade Practices Commission in relation to the adjudication of all non-criminal reviewable matters under the Act. New provisions relating to mergers, abuse of dominant position, delivered pricing and specialization agreements were added to the list of reviewable mat-

ters. The criminal conspiracy provisions were clarified and strengthened. In addition, the responsibility for investigating bank mergers and agreements was transferred from the Inspector General of Banks to the Director. Finally, new investigatory powers and procedures were enacted, to bring the legislation into conformity with the Charter of Rights and Freedoms.

In some areas of the economy, commercial activity, including some of its competitive aspects, is subject to regulation under federal, provincial or municipal legislation. Although such controls may restrict competition, if they are imposed pursuant to valid legislation they may provide a defence to proceedings under the Act. Until June 19, 1986, agent Crown corporations could in certain circumstances seek exemption from the provisions of the Act by virtue of section 16 of the Interpretation Act which states that no enactment is binding on Her Majesty except as mentioned or referred to in the enactment. Section 2.1 of the Competition Act now expressly provides that the Act is binding on agent Crown corporations in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons. However, agent Crown corporations have available to them the same defences to a charge under the Act, such as the regulated conduct defence, as are available to any other person.

(3) *Information and Compliance Programs*

While enforcement of the Competition Act depends largely upon investigation of complaints received from consumers and members of the business community and from press reports, careful attention is also given to the encouragement of voluntary compliance. It has been referred to in earlier annual reports as the Program of Compliance and is intended to be a vigorous and sustained program involving education and explanation, discussion of business problems and the giving of opinions concerning the application of the Act.

As part of the program, members of the business community are invited to discuss proposed policies before they are introduced in order to ascertain whether these plans might prove to be in conflict with the Act. The Director tries to assist members of the business community to avoid coming into conflict with the Act by studying matters they submit to him and by indicating to them whether or not the adoption of proposed plans would lead him to launch an inquiry. Business people who consult him are not bound by any opinion he gives and remain free to adopt practices that they are prepared to have tested before the Competition Tribunal or the courts. The Director, similarly, cannot bind himself or his successors by such opinions and always makes it clear that the matter would be subject to review if there should be any change in the details of the proposed plan, its method of implementation or the circumstances surrounding it. During the year, 33 written compliance opinions were provided (not including Marketing Practices) and approximately 109 informal discussions were held.

During the fiscal year substantial initiatives were undertaken to expand and enhance the Director's existing compliance and information programs. These initiatives, which are more fully described in Chapter II, include consideration of increased use of enforcement alternatives such as negotiated settlements, as well as the development of information bulletins on various aspects of the Act and its application.

As part of the information program, the Director and senior staff members undertook a substantial number of speaking engagements throughout the year before trade associations and other business organizations, professional associations and groups concerned with the Act. Information on the various forums addressed, together with a list of the more recent speeches and publications available to the public is provided in Appendix V. In addition, the Marketing Practices Branch publishes a quarterly Misleading Advertising Bulletin containing information relating to the provisions of the Act that it administers.

During the year, the Bureau responded to approximately 998 requests for information relating generally to the application and scope of the Act. Persons who wish to obtain general information relating to the activities of the Bureau of Competition Policy or on the Competition Act can request it from the Office of Enforcement Operations or from the appropriate enforcement branch within the Bureau. Information respecting the marketing practices provisions of the Act can be obtained from the head office of the Marketing Practices Branch in Hull or from any of the regional and district offices of the department.

2. Summary of Major Provisions of the Act

(1) *Matters Reviewable by the Competition Tribunal under Part VII of the Act*

Part VII of the Competition Act applies to certain specified situations which are capable of being pro-competitive, anticompetitive, or neutral in their effects on competition, depending upon the facts of the particular case. Thus, this Part does not prohibit outright the conduct or transactions described therein. Rather, it provides that an application may be made by the Director (except in the case of specialization agreements, where the parties may also apply) to the Competition Tribunal and, in circumstances where certain criteria are met, an order may be issued in accordance with the provisions of the relevant section. In this context the Tribunal has jurisdiction to issue a variety of orders, including prohibition, divestiture and any other requirement that is necessary to overcome the effects of the matter in question or to restore or stimulate competition in the market.

The specific matters reviewable by the Competition Tribunal under Part VII of the Act are as follows:

Refusal to Deal:

This provision applies where a person is substantially affected in his or her business by the refusal, the person is willing and able to meet the usual trade terms of the supplier, the product is in ample supply and the inability to obtain supplies of the product results from insufficient competition among suppliers of the product in the market. In such cases, the Director may apply to the Tribunal for an order directing one or more suppliers of the product in the market to accept the person as a customer within a specified time on usual trade terms.

Where the product is an article, as opposed to a service, the order to supply may not need to be carried out if within the time specified in the order for the supplier to accept the person as a customer, customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with persons able to obtain adequate supplies in Canada (section 47).

Consignment Selling:

Where a supplier, who ordinarily sells a product for resale, introduces a practice of consignment selling for the purpose of controlling dealer prices or discriminating between consignees, or between dealers who purchase the product for resale and consignees, the Director may apply for an order of the Tribunal directing the supplier to cease carrying on the practice (section 48).

Exclusive Dealing, Tied Selling, and Market Restriction:

Section 49 of the Act defines these three trade practices. Briefly, exclusive dealing occurs when a purchaser is required to deal only or primarily in particular products or to refrain from dealing in specific products; tied selling occurs when the sale of one product is tied to the sale of another; market restriction occurs when a supplier, as a condition of sale, imposes restrictions as to the market in which his or her customer may deal. Where any of these trade practices is engaged in by a major supplier or is widespread in a market, and competition is or is likely to be lessened substantially, the Director may apply to the Tribunal for an order directed to the supplier to cease the practice (subsections 49(2) and (3)).

Abuse of Dominant Position:

Where a firm or firms have a dominant market position and have engaged in, or are engaging in a practice of anticompetitive acts that substantially lessen competition, the Director may apply to the Tribunal for an order against a firm prohibiting the practice and/or directing the firm to take remedial action to overcome the effects of the practice in the market (section 51). To provide guidance, the Act contains a non-exhaustive list of anticompetitive acts such as the squeezing of profit margins of vertically integrated customers, the use of

fighting brands and freight equalization (section 50). To ensure that the law does not impede aggressive, pro-competitive behaviour, the Act directs the Tribunal to consider, in assessing the effects of the practice on competition, whether the practice is a result of superior competitive performance (subsection 51(4)).

Delivered Pricing:

Section 52 defines delivered pricing as the practice of refusing delivery of an article to a customer (or potential customer) at any place in which the supplier already makes a practice of delivering to other customers. The Tribunal may, on application by the Director, prohibit any or all suppliers of an article from engaging in delivered pricing, provided the supplier is a major one or the practice is widespread and provided the delivered pricing system results in denial of an advantage, to a customer or potential customer, that would otherwise be available in the market (section 53).

Foreign Judgments and Laws:

The Tribunal may, on application by the Director, prohibit (in whole or in part) the implementation of foreign judgments, decrees, orders or other process which would have one or more specified adverse effects on economic activity in Canada (section 54).

Foreign Laws and Directives:

The Tribunal may, on application by the Director, prohibit (in whole or in part) the implementation of a decision, made as a result of a foreign law or directive, which would have or would be likely to have one or more specified adverse effects on economic activity in Canada. The Tribunal has similar powers to prohibit the implementation of a decision made as a result of directives from persons outside Canada for the purpose of giving effect to a conspiracy entered into outside Canada that, if entered into in Canada, would have been in contravention of section 32 of the Act (conspiracy to lessen competition) (section 55).

Foreign Suppliers:

The Tribunal may, on application by the Director, order a person in Canada to supply a product to a second person in Canada or to cease dealing in a product of a foreign supplier where it finds that the foreign supplier's refusal to supply the second person in Canada was carried out as a result of buying power exerted outside Canada on the foreign supplier on behalf of or for the benefit of the first person in Canada. Where an order to supply is made, the Tribunal may order the first person to sell the product at cost to the person refused (section 56).

Specialization Agreements:

Persons who have entered into or are about to enter into a specialization agreement may apply to the Tribunal for an order registering the agreement (section 58). Before such an order can be made, the law requires that the Director be given a reasonable opportunity to be heard. Registration results in an exemption from the conspiracy and exclusive dealing provisions of the Act (section 62).

To obtain registration, the parties to the agreement must demonstrate that the implementation of the agreement is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any lessening of competition resulting from the agreement and that such gains would not likely be attained if the agreement were not implemented. The Tribunal is directed to consider whether such efficiency gains will bring about a significant increase in import substitution or the real value of exports.

Mergers:

Where, on application by the Director, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, it may

prohibit the completion or implementation of all or part of the proposed merger, direct the dissolution of the completed merger or the divestiture of specific assets or shares, and make any other orders (including an order made on consent) designed to ensure that the merger or proposed merger does not prevent or lessen competition substantially (section 64). The law also provides for interim injunctive relief in respect of mergers or proposed mergers (sections 72 and 76), and conditional orders which may be rescinded or varied upon the fulfilment of certain conditions (section 71).

To provide guidance, section 65 includes a list of factors for the Tribunal to consider in the assessment of a merger, such as the availability of product substitutes, the existence of barriers to entry and the degree of competition provided by foreign products or foreign competitors in the market. To ensure that both the qualitative and quantitative aspects of a merger are considered, the Tribunal cannot find that a merger lessens competition substantially solely on the basis of evidence of concentration or market share. The merger law also provides a defence in situations where the gains in efficiency that would result from the merger more than offset the effects arising from the lessening of competition, and the gains would not likely be attained if the order were made (section 68).

The Director is specifically authorized to issue advance ruling certificates with respect to proposed merger transactions. An advance ruling certificate may be issued when a party or parties to a proposed transaction satisfy the Director that he would not have sufficient grounds on which to oppose the transaction under the merger provisions of the Act (section 74). If a certificate is issued, and the transaction to which the certificate relates is substantially completed within one year after the certificate is issued, the Director is precluded from applying to the Tribunal for an order against the merger on the basis of the same or substantially the same information on which the certificate was issued (section 75).

(2) *Prenotification Provisions*

Part VIII of the Act requires prenotification to the Director of all merger proposals involving companies who, together with their affiliates, have combined revenues or assets of more than $400 million and when the value of the assets involved in the transaction, or revenues from those assets, exceed the threshold of $35 million. In the case of corporate amalgamations, this latter threshold is $70 million. Parties are required to wait from seven to twenty-one days, depending on the circumstances and information requirements, during which the proposed transaction cannot be completed. Whether a merger has to be prenotified or not, all mergers are subject to scrutiny by the Director under section 64.

(3) *Criminal Offences under Part V of the Act*

Part V prohibits under criminal sanctions certain specified trade practices, agreements or arrangements which lessen competition, and misleading or deceptive marketing practices.

Specified Trade Practices:

Under section 34 it is an offence to be a party to a sale that discriminates against competitors of a purchaser of an article by granting a discount, rebate, allowance, price concession or other advantage to the purchaser that is not also available to competitors. An offence does not occur, however, unless such a sale is part of a practice of discriminating and is in respect of a sale of articles of like quality and quantity. It is also an offence to engage in predatory pricing whereby products are sold in any area of Canada at prices lower than those exacted elsewhere in Canada, or are sold at unreasonably low prices where the effect, tendency or design of such policies is to lessen competition substantially or eliminate a competitor. In addition, section 35 prohibits the granting to a purchaser of an allowance for advertising purposes that is not offered on proportionate terms to competing purchasers.

A supplier, or a person engaged in a business that relates to credit cards, is prohibited under section 38 from attempting to influence upward or discourage the reduction of the price at which another person supplies or advertises a product or refusing to supply anyone because of that person's low pricing policy. Also prohibited is any attempt to induce a supplier to refuse to supply any person because of that person's low pricing policy. If a supplier indicates

a retail price in an advertisement for a product, the price must be expressed in such a manner as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price. This section does not prohibit a supplier from affixing a price to a product supplied by him or her where the supplier makes no attempt to enforce that price.

Agreements Which Lessen Competition:

Combinations, agreements or arrangements to lessen competition unduly in relation to the supply, manufacture, production, etc., of a product are prohibited (section 32). The essence of the offence is conspiracy, but it is not necessary to prove that the combination, agreement or arrangement would be likely to eliminate, completely or virtually, competition in the market to which it relates (subsection 32(1.1)). Furthermore, the court may infer the existence of the conspiracy from circumstantial evidence, with or without direct evidence of communication between or among the alleged co-conspirators (subsection 32 (1.2)). In addition, it is not necessary to establish that the parties intended that the conspiracy would have the prohibited effect (subsection 32 (1.3)).

Bid-rigging, whereby one party agrees to refrain from bidding in response to a call for tender or where there is collusion in the submission of bids, is, unless made known to the tendering authority, prohibited outright with no requirement of an undue lessening of competition (section 32.2). Certain kinds of agreements between banks regarding such matters as rates of interest are also prohibited outright. Where directors or officers of a bank knowingly enter into such agreements on behalf of a bank, they may be held liable (section 33). The implementation of a foreign directive by a company operating in Canada, that gives effect to an agreement or arrangement entered into outside Canada and which would otherwise be in violation of section 32, is an offence under section 32.1. Finally, it is an offence under section 32.3 to conspire or agree to limit unreasonably the opportunities for anyone to participate in professional sport or to negotiate with the team of his or her choice. Certain matters such as the international character of the sport must be taken into account by the courts in determining whether an offence has occurred under this provision.

Misleading Advertising and Deceptive Marketing Practices:

All representations, in any form whatever, that are false or misleading in a material respect are prohibited (paragraph 36(1)(a)).

Any materially misleading representation as to the price at which the product is ordinarily sold is prohibited. A representation as to price means the price the product ordinarily sells for in the market area, unless specified to be the advertiser's own selling price (paragraph 36(1)(d)).

When a person clearly exhibits two or more prices on a product, its container or wrapper, etc., the product must be supplied at the lower price (section 36.2). This provision does not prohibit the existence of two or more prices but requires that the product be offered for sale at the lower price.

It is also an offence to advertise a product at a bargain price if the advertiser does not have the product available for sale in reasonable quantities, having regard to the nature of the market, the nature and size of the advertiser's business and the nature of the advertisement. The advertiser will not be liable, however, where he or she can establish that the unavailability of the product was due to circumstances beyond his or her control, the quantity of the product obtained was reasonable, having regard to the nature of the advertisement, or a raincheck was offered when supplies were exhausted (section 37).

The sale of any product by a retailer at a price higher than the price currently being advertised by the retailer is prohibited, and the seller is liable unless the price advertised was an error and has been corrected immediately, or unless the seller is not a person engaged in the business of dealing in that product (section 37.1).

Promotional contests are prohibited unless otherwise lawful and provided there is adequate and fair disclosure of the number and approximate value of prizes and of material infor-

mation relating to the chances of winning, the selection of participants or distribution of prizes is made on the basis of skill or on a random basis, and the distribution of prizes is not unduly delayed (section 37.2).

Other misleading advertising and deceptive marketing practices provisions relate to performance claims, warranties, tests and testimonials, and pyramid and referral selling schemes. There are also exclusions and limitations applicable to the provisions, as well as various defences.

Penalties:

The offences in Part V, other than misleading advertising and deceptive marketing practices, are indictable. Section 32.1, which involves foreign directives to a Canadian affiliate to give effect to a conspiracy in restraint of trade outside Canada, provides for a monetary penalty in the discretion of the court, since only companies may be prosecuted. Section 32, which prohibits conspiracy in restraint of trade, provides for maximum penalties of $10 million or five years imprisonment, or both. In the remaining provisions of Part V, the maximum term of imprisonment is two years or five years, as the case may be, or an unlimited fine at the discretion of the court. The discretion with respect to the monetary penalty is either stated expressly in the section or may be determined by reference to the Criminal Code when only a maximum term of imprisonment of two years or five years, as the case may be, for indictable offences is set out.

Offences in relation to misleading advertising and deceptive marketing practices, with three exceptions, may be prosecuted either by way of summary conviction or on indictment. Where proceedings are by way of summary conviction, the maximum penalties that may be imposed are $25 000 or one year imprisonment, or both. In the case of proceedings by way of indictment the maximum penalties are a fine in the discretion of the court or five years imprisonment, or both. The three exceptions, double ticketing, bait and switch selling and sale above advertised price, may be prosecuted only by way of summary conviction. In the case of the latter two, the maximum penalty is $25 000 or one year imprisonment, or both; in the case of double ticketing it is $10 000 or one year imprisonment, or both. Where proceedings for any of these offences are instituted by way of summary conviction, charges must be laid within two years (subsection 44(5)).

3. Procedures

The provisions of the Competition Act are applied by the Director of Investigation and Research, the Competition Tribunal and the courts.

(1) *Initiation and Conduct of Inquiries*

The Director of Investigation and Research is responsible for the conduct of all inquiries under the Act. An inquiry is most frequently commenced when, through an informal complaint or otherwise, the Director has reason to believe under paragraph 8(1)(b) that there has been a violation of the Act or that grounds exist for the Tribunal to make an order under Part VII. Less often, the Director receives an application for an inquiry from six residents in the form of a statutory declaration pursuant to section 7 of the Act. There is also provision for the Minister to direct that an inquiry be undertaken by the Director.

Once an inquiry has begun, the Director may utilize a number of investigative tools provided in the legislation. He may, pursuant to section 13 of the Act, make an application to a court for a warrant authorizing the search of premises and the seizure of evidence pertaining to the inquiry. Pursuant to section 9, the Director may also apply to a court for an order requiring any person having or likely to have information relevant to the inquiry to produce records, to make written returns under oath or affirmation, or to attend and be examined orally under oath or affirmation.

The Director may, at any stage, discontinue an inquiry if he is of the opinion that the matter does not justify further inquiry. In some instances the Director has exercised his discre-

tion to discontinue as a result of undertakings received from the party under inquiry. The Director is required, however, to report on any discontinuance to the Minister. Further, where the inquiry was commenced as a result of a six resident application, he must inform the applicants of the decision and provide to them the grounds for the discontinuance.

The Director may, at any stage of an inquiry, remit the evidence obtained to the Attorney General of Canada for such action as the latter may wish to take, or he may pursue the matter through an application to the Competition Tribunal.

(2) *The Competition Tribunal*

The Competition Tribunal, established by the Competition Tribunal Act, is responsible for the adjudication of the non-criminal matters contained in Part VII of the Competition Act, such as the provisions dealing with mergers and abuse of dominant position. Criminal matters are adjudicated by the courts.

The membership of the Tribunal consists of not more than four judicial members appointed from the Federal Court — Trial Division by the Governor in Council on the recommendation of the Minister of Justice and not more than eight lay members appointed by the Governor in Council on the recommendation of the Minister of Consumer and Corporate Affairs. The Governor in Council may also appoint an advisory council to advise the Minister on the appointment of lay members. This council has a maximum of ten members and consists of persons who are knowledgeable in economics, industry, commerce or public affairs and may, for example, include individuals chosen from the business and legal communities, consumer groups and labour. On January 8, 1987, the Minister announced the appointment of seven members to the advisory council.

Applications to the Tribunal must be heard before a minimum of three and a maximum of five members, with the exception of applications for interim relief. Each panel must have at least one judicial and one lay member with a judicial member presiding. With one exception, the Director of Investigation and Research is the only person who may bring an application before the Competition Tribunal; private parties may apply to the Tribunal under section 58 of the Competition Act for an order to register a specialization agreement. However, any person who may be affected by the outcome of a decision made by the Tribunal may apply for leave to intervene in any proceedings before the Tribunal. Provincial Attorneys General have a statutory right to intervene in any proceedings before the Tribunal relating to mergers and specialization agreements. Under the Competition Tribunal Act, the Tribunal has authority to make rules relating to practice and procedure before it. Proposed rules, which must be published in the Canada Gazette and approved by the Governor in Council, were published in November of 1986. (Final rules were published on July 8, 1987.) An order of the Competition Tribunal may be appealed to the Federal Court of Appeal as if it were a decision or order made by the Federal Court — Trial Division. However, an appeal on a question of fact requires the leave of the Federal Court of Appeal.

To obtain further information concerning the Tribunal or practice and procedure before it, readers should contact: The Registrar, Competition Tribunal, Suite 600, 90 Sparks Street, Ottawa, Ontario K1P 5R5.

(3) *Enforcement of Criminal Matters*

At any stage of an inquiry, the Director may submit the evidence gathered in the inquiry to the Attorney General of Canada for such action as he may wish to take. Each offence provision under Parts V and VI of the Act specifies whether the matter is to be prosecuted by way of summary conviction or on indictment and sets out the amount of fine or the length of imprisonment that may be imposed. While most proceedings are taken in the provincial courts, the Act also provides that prosecutions for indictable offences, and certain other proceedings under the Act, may be conducted in the Federal Court — Trial Division. An appeal from a judgment of this court lies to the Federal Court of Appeal and from that court to the Supreme Court of Canada. The consent of an individual accused is, however, required before prosecution may be instituted in the Federal Court — Trial Division in respect of any offence under Part V or section 46.1.

(4) *Special Remedies*

In addition to the penalties set out in Parts V and VI, and the remedies referred to in Part VII, the Competition Act provides certain special remedies

(a) Interim injunction

Under section 29.1 of the Act an interim injunction may be issued by a court forbidding any person from doing any act or thing that it appears to the court may constitute or be directed towards the commission of an offence under Part V or section 46.1 of the Act. The injunction may be issued only if the court is satisfied that injury to competition or irreparable damages would otherwise result.

(b) Prohibition order

Under subsection 30(1) of the Act, a person convicted of an offence under Part V may be prohibited from the continuation or repetition of the offence or from doing any act or thing directed towards such continuation or repetition. Subsection 30(2) provides that an order may be granted in proceedings commenced by information of the Attorney General of Canada, or the Attorney General of a province, without the usual prosecutorial proceedings having been instituted, where it appears that a person has done, or is likely to do, any act or thing constituting or directed toward the commission of an offence under Part V. Such orders may be made with or without the consent of the person against whom the order is sought. By virtue of subsection 30(6), a court may punish any person who contravenes or fails to comply with an order under section 30.

(c) Damages

Under section 31.1 of the Act, a person who has suffered loss or damage as a result of conduct contrary to any provision of Part V of the Act, or as the result of the failure of any person to comply with an order issued pursuant to the Act, may sue for and recover damages equal to the amount suffered by him, together with the costs to him of the investigation and proceedings. To facilitate such private action, it is also provided that the record of any proceedings in which a person was convicted of an offence arising from any such conduct or failure is proof that the person against whom the private action is brought engaged in that conduct, and any evidence in the proceedings as to the effect of such conduct on the plaintiff is evidence in the private action.

(d) Patent and Trade Mark Rights

Section 29 of the Act provides that the Federal Court may, on the information of the Attorney General of Canada, make orders to correct misuse of patent or trade mark rights. Such orders may revoke a patent or cancel the registration of a trade mark, or prescribe lesser remedies where such rights have been used to restrain trade or injure competition in the manner described in that section.

(e) Tariff Adjustment

Section 28 of the Act empowers the Governor in Council to reduce or abolish the tariff on an article where it appears, as the result of an inquiry under the Act, a judgment of a court, or a decision of the Tribunal, that competition in respect of an article has been prevented or lessened substantially, and that the restraint on competition has been facilitated by customs duties on the article, or can be reduced by reduction or removal of the duties.

(5) *Representations before Regulatory Boards*

Sections 97 and 98 of the Act expressly authorize the Director to make representations to and to call evidence before federal and provincial boards, commissions or other tribunals in order to draw to their attention considerations in respect of competition which are relevant to a matter being heard before them. The Director's interventions before provincial regulatory boards may occur only at the request of the board or on the Director's own initiative, with the board's consent.

CHAPTER II

CURRENT DEVELOPMENTS

1. Implementation of the Competition Act.

Canada's competition legislation was significantly changed by the proclamation of the Competition Act on June 19, 1986 (except for sections 80-95 dealing with notifiable transactions which were proclaimed in force on July 15, 1987). The scope of these changes led the Director to proceed with a comprehensive review of the Bureau's enforcement policies and procedures to ensure more effective and timely enforcement of the law.

Shortly after passage of the Act, an Implementation Task Force was established to oversee the work of several groups within the Bureau studying areas of major amendment to the Act and the related issue of compliance and negotiated settlement initiatives. The group on investigatory powers and procedures was responsible for developing new forms and operating procedures which would comply with the new provisions of the legislation and ensure conformity with the Charter of Rights and Freedoms and the requirements of due process. Other groups studied the provisions of the Act relating to mergers, abuse of dominance, delivered pricing, specialization agreements, banking and Crown corporations, and a series of seminars were conducted for Bureau staff on these topics. The work of these groups laid the foundation for the Director's analytical approach to these provisions and will also form the basis of the information bulletins the Director plans to distribute to the public in the future.

To supplement these internal activities, seminars were held for Bureau staff with outside legal and accounting experts on the environment in which mergers take place, and with senior officials from the United States Department of Justice and Federal Trade Commission on their experience with mergers.

As part of the implementation process, Bureau staff met with representatives of the Department of Justice during the year to discuss the application of the new legislation and to consider the establishment of a specialized group of lawyers to handle competition matters. The Bureau also began to develop a list of experts in various industries and professions who could be consulted in the decision-making process and supplement the Bureau's expertise where necessary. Finally, in recognition of the sensitivity of information relating to proposed mergers, the Bureau embarked on a review of its internal security requirements.

The group on compliance and negotiated settlements was established with a mandate to study the recommendations of the Ministerial Task Force on Program Review (the Nielsen Task Force recommendations are set out in the 1986 Report) and propose specific measures to implement these recommendations. Following considerable research which included discussions with officials from the Department of Justice, other Departments which have a compliance program in place and outside consultants, a proposal was submitted to senior management of the Bureau for its review. This review was still in progress at year-end.

In the course of an extensive program of speaking engagements undertaken to explain and discuss the new legislation, the Director and senior Bureau staff addressed more than forty forums across Canada (details are given in Appendix V). At several of these forums the Director informed the public of a number of new compliance and enforcement initiatives which would be introduced. These initiatives included, among others, the development of information bulletins on various aspects of the legislation and the formation of a private sector advisory group to provide input to the Bureau on how the new Act is perceived by the public. The Director also outlined his intention to pursue a more proactive approach to enforcement by making broader use of mechanisms such as consent orders in civil cases and consent prohibition orders without conviction in appropriate criminal cases. The Director indicated his willingness to consider the acceptance of undertakings in lieu of pursuing an inquiry through its usual course to full litigation in other types of appropriate cases. However, he reiterated that he would not hesitate to recommend prosecution or seek an order from the Tribunal in those cases where prosecution alternatives would not be appropriate.

In addition to the impetus provided by the Nielsen Task Force, greater scope for the use of a range of compliance mechanisms is provided by the shift in the new Act from a predominantly criminal law orientation to an increased emphasis on non-criminal remedies. The advance ruling certificate available in respect of mergers, and the consent order provisions applicable to all reviewable matters, exemplify this new orientation towards alternatives to litigation and provide a stronger statutory basis for the use of negotiated settlements.

Mergers are another area where the new Act is expected to have a noticeable impact. In light of the complexity of merger analysis and the presence in the legislation of a precise timetable for the review of matters subject to prenotification, the creation of a separate Merger Branch was announced during the year. Scheduled to be operational April 1, 1987, the Branch has primary responsibility over merger law enforcement, including prenotification. This will ensure that expertise in this area is developed as quickly as possible and applied on a consistent basis.

Also in relation to mergers, considerable effort was devoted during the year to the development of the notifiable transactions regulations. These regulations prescribe the methods of determining the various thresholds above which the prenotification provisions of the Act will apply. Experts in accounting and securities law assisted the Bureau in the process of developing the regulations. Subsequent comments received from representatives of business, professional associations and organizations also proved to be of assistance.

It is anticipated that these measures, together with the new enforcement tools provided in the legislation, will facilitate voluntary compliance and ensure that competition problems are addressed in a timely and effective manner; they will also assist in fulfilling the principal recommendations of the Nielsen Task Force. In addition, they will enable the Director to ensure that the Bureau's resources are applied as effectively as possible in the administration and enforcement of the new legislation. In this regard, at year-end the Director was continuing a review of the resource levels and organizational structure necessary to ensure that the objectives of the legislation are met.

2. The State of Competition

Canada/U.S. Trade Negotiations

Negotiations for the establishment of a Canada-U.S. free trade area have been undertaken by the Government of Canada with the objective of concluding an agreement before the end of the 1987 calendar year. Canada's main objectives in pursuing this trade initiative have been identified as being (1) to obtain secure and predictable access to the U.S. market, (2) to impose appropriate discipline on the use of trade distorting contingency measures, and (3) to establish a mechanism to deal with these distortions in an effective and timely manner.

During the year, the Bureau assisted the Trade Negotiation Office in the analysis of Canadian and U.S. contingency trade remedies and the development of a competition policy alternative to the application of such remedies in the context of a bilateral free trade area. The Bureau has submitted that existing competition law provisions dealing with geographic price discrimination and predatory pricing provide a preferable alternative to existing anti-dumping laws for governing transborder pricing practices in the context of a free trade area. The Bureau has argued that competition law standards are more rigorous than anti-dumping standards as they focus on the effects of the pricing practice on the process of competition rather than on the injury to specific competitors. The use of competition laws would also be more consistent with the broad objective of free trade, which is to foster economic efficiency and growth.

The implementation of such a proposal would, however, require careful attention to the need and scope for greater compatibility of substantive and procedural elements of Canadian and U.S. antitrust laws. The question of jurisdiction, discovery rules, the scope of public and private enforcement and the enforcement of remedies are also important considerations that

would need to be addressed to ensure effective application of price discrimination/predatory pricing provisions to transborder pricing practices.

The Bureau has been actively involved in interdepartmental deliberations to define Canada's position on a number of issues including trade in services, technology, investment and government procurement. The Bureau has also participated in examining the impact of a free trade agreement on specific sectors of the economy, namely, the financial, communication and transportation sectors. In general, the Bureau has advocated greater and freer market access and a more open business environment under the principle of national treatment.

Financial Markets

During the year, the Bureau's involvement in the financial services sector was heightened by a number of factors.

The 1986 amendments to the Competition Act had the result of transferring to the Director the responsibility for administering legislative provisions dealing with bank amalgamations, acquisitions and agreements. In view of this added enforcement responsibility and the extensive revision to financial system regulation that is underway, a new Financial Services Unit has been created within the Bureau to specialize in financial market policy and enforcement issues.

The changing nature of financial markets both in Canada and abroad has continued to provide impetus for the reform of legislation that governs the financial services sector in Canada. During the year, several reports were released which fuelled this process.

Supreme Court Justice Willard Z. Estey produced his commission of inquiry report examining the circumstances surrounding the 1985 failures of the Canadian Commercial and Northland banks. The Estey Report focusses on the effectiveness and accountability of the regulatory process and the institutions entrusted with bank supervision. In November 1986 the Economic Council of Canada published a policy document entitled "Competition and Solvency: A Framework for Financial Regulation", followed by a companion research findings paper on March 31, 1987. The Council recommends a fundamentally different regulatory approach based on institutional function, rather than institutional type, with emphasis on creating a regulatory system with considerable flexibility. Following the release of a policy statement entitled "New Directions for the Financial Sector", the Federal Government introduced legislation in January, 1987 to implement new proposals concerning the financial supervisory and deposit insurance systems. It is also expected that new rules governing institutional powers and the ownership of financial institutions will be tabled in Parliament in the summer of 1987.

At the provincial level, the Standing Committee on Finance and Economic Affairs of the Ontario Legislative Assembly invited the Director to appear before it at hearings convened to examine the question of corporate concentration in the financial services sector. The Director's submission focussed on the relationship between corporate concentration and the exercise of economic power in a given market, and the application of the Competition Act. (Further details of the Director's submission are provided in Chapter V.)

3. Statistics

Table I presents a statistical picture of the work of the Bureau of Competition Policy, excluding work related to misleading advertising and deceptive marketing practices. The Table identifies activities during the past year in comparison with other years and has been revised to reflect changes in the Bureau's information system. Some complaints received by the Bureau give rise to very little study; other cases require more attention but are discontinued at an early stage of investigation because, for lack of evidence or other reason, they do not appear to justify further inquiry. Item 1 reflects the total number of complaints received and item 2 identifies the number of preliminary investigations commenced in the year. Item 3

Table I *

OPERATIONAL ACTIVITIES OF THE BUREAU OF COMPETITION POLICY (EXCLUDING MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS)

	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87
1. Number of complaints received	N/A	N/A	N/A	N/A	381	692	839	1075	1013	1028
2. Preliminary examinations commenced	N/A	N/A	N/A	N/A	199	218	223	269	237	216
3. Applications for inquiries under section 7	5	7	7	8	9	8	2	2	8	13
4. Formal inquiries in progress at the end of the year	76	73	78	69	69*	71	58	54	58	78
5. Inquiries concluded by reports of discontinuance to the Minister	14	16	21	26	20	19	19	12	11	11
6. Inquiries referred to the Attorney General of Canada	23*	14	24	21	33*	24	20	27	21	9
7. Inquiries closed on the recommendation of the Attorney General of Canada	6	6	3	5	6	5	6	4	11	4
8. Prosecutions or other proceedings commenced	24	11	21	6	24	21	16	17	19	14
9. Applications under Part VII **	1	1	2	0	0	1	0	0	1	1
10. Interventions before federal regulatory bodies	4	0	3	4	6	4	15	17	15	8
11. Interventions before provincial regulatory bodies	1	2	1	0	9	7	8	6	7	10

* Revised

** Prior to 86/87, this figure indicates applications under the former Part IV.1

inquiries are initiated under sections 7 and 8 of the Act. Item 4 refers to inquiries which were formally commenced or in which powers to search, to secure information or to examine witnesses have been used. Items 6 to 11 are self-explanatory.

During the year ended March 31, 1987, fifty cases under the Act (excluding misleading advertising and deceptive marketing practices cases) were considered by the courts. These consisted of thirteen proceedings commenced during the year, and thirty-seven proceedings before the courts from previous years. Eleven cases related to conspiracy under section 32; five related to bid-rigging under section 32.2; one related to merger or monopoly under the previous section 33; two related to price discrimination under section 34; two related to promotional allowances under section 35; and twenty-nine related to price maintenance or refusal to supply under section 38. Twenty-two proceedings were concluded during the year, of which sixteen resulted in conviction, and six resulted in the acquittal of the accused. Two of the concluded proceedings related to section 32; two related to section 32.2; one related to section 34; one related to section 35; and sixteen involved price maintenance. Fines totalling $683 642.85 were imposed during the year. In addition, in twenty-eight of the cases before the courts at the end of the year, $557 000 in fines was outstanding in three matters that were under appeal or in which proceedings against some accused were still pending. The completed proceedings are listed in Appendix II, and show the products involved, persons charged, the place of trial and details of disposition. Outstanding matters are reported in the relevant Branch chapters.

Statistics of the work relating to misleading advertising and deceptive marketing practices are presented in Chapter VII. During the year ended March 31, 1987, 264 misleading advertising and deceptive marketing practices cases were considered by the courts. These consisted of 143 proceedings commenced during the year and 121 proceedings before the courts from previous years. This includes 14 cases that had received court consideration in previous fiscal years but were under appeal at the start of the year. There were 154 proceedings concluded during the year, 115 of which resulted in convictions and 39 in acquittals, charges with-

drawn and other completions of court proceedings that were not convictions. Fines totalling $947 170 were imposed during the year. In addition, in 110 of the cases before the courts at the end of the year, $149 500 in fines was outstanding in nineteen matters that were under appeal or in which proceedings against some accused were still pending. Completed proceedings are listed in Appendix II and outstanding matters are listed in Appendix IV.

4. Merger Review Experience

The passage of the Competition Act brought about significant changes to Canada's merger law. According to the merger register maintained by the Bureau, in the period June 19, 1986 to March 31, 1987, there were 948 mergers and acquisitions. The vast majority of these mergers have either a beneficial or neutral impact on the economy. However, a small proportion of these mergers may have an adverse effect on competition and future economic performance. Since last June the Bureau has examined, mostly in a summary fashion, over three hundred mergers. In about forty matters a more extensive examination was required. A number of these cases are still ongoing.

Once the Bureau has determined that further examination is required, the Act allows for several methods of resolution. In cases where the Director is of the opinion that a merger lessens or is likely to lessen competition substantially, the matter can be brought by the Director before the Tribunal for adjudication. The Tribunal has a wide range of orders to choose from as specified in sections 64, 71, 72 and 76 of the Act.

If the parties are confident that a merger will raise no competition issues but want greater certainty, they can ask for an Advance Ruling Certificate. Section 74 of the Act provides for the issuance of a certificate by the Director where he is satisfied that he would not have sufficient grounds to apply to the Tribunal. The certificate precludes the Director from challenging the merger if it is substantially completed within one year after the certificate is issued and if there is no substantial change in the information upon which the certificate was based. An Advance Ruling Certificate may be issued with or without certain terms or undertakings by the purchaser, depending on the circumstances of the case, and the situation may be monitored by the Bureau on an ongoing basis.

Another avenue under which a proposed merger can be reviewed is through the Director's Program of Compliance. Under this program the Director will, based on the information before him, indicate whether a particular fact situation would result in the initiation of a formal inquiry.

Section 69 of the Act provides yet another method of resolution. It stipulates that no application with respect to a merger can be brought before the Tribunal more than three years after the merger has been substantially completed. This provision essentially allows the Director to adopt a "wait and see" stance if the competitive impact of the merger is uncertain. This monitoring is likely to be undertaken where it is difficult to determine at the time of the examination the future effects on competition of the merger. The particular issues to be monitored are usually the subject of a compliance letter, assuming the parties have sought the Director's opinion in advance of the merger. The following is a breakdown of how the forty cases requiring a more extensive examination were resolved during the period under review:

Mergers examined in a significant fashion	40
Filed Closed - concluded as posing no issue under the Act	12**
Processed under Program of Compliance	8**
Processed under Advance Ruling Certificate	3**
Parties abandoned proposed merger as a result of Director's position	3*
Applications to Tribunal	1*
Examinations ongoing	14

* Includes Palm Dairies case

** Statistics relate to mergers and acquisitions which may be proposed or completed. In some instances proposed transactions which were the subject of review were not completed for reasons unrelated to the Director's decision.

The facts and issues raised in merger cases are often varied and complex. A brief summary of the Director's involvement in some of the merger cases completed during the review period is contained below.

(1) *Canadian General Electric Limited and Westinghouse Canada Inc.*

On December 31, 1986, the above companies announced the merger of their large power transformer operations. Despite the high level of concentration created by the merger, the Director considered a number of the other factors that would restrict the exercise of market power. One important factor was the countervailing market power held by the large and sophisticated buyers for these products. Another factor was the potential for those buyers to switch to foreign suppliers. In addition, the Director recognized that efficiency gains may result from the merger.

Consequently, the Director informed the parties that while he had concluded that the merger would lessen competition in Canada, he could not conclude at that time that the lessening would likely be substantial within the meaning of the Act. The parties were also informed that the Director will be monitoring the industry during the three year limitation period to ensure that a material change in circumstances does not alter his conclusion.

(2) *Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc.*

During the year these two major cigarette manufacturers agreed to amalgamate their Canadian operations. The newly amalgamated entity, Rothmans Benson & Hedges Inc., would be jointly owned by the two international parent corporations: Rothmans Inc. and Philip Morris Inc.

Despite the fact that the merger would decrease the number of cigarette and fine-cut ("roll-your-own") tobacco manufacturers in Canada from four to three, the conclusion reached by the Director was that competition in cigarette manufacturing would not be prevented or lessened substantially by the merger. Based upon information received, the Director considered that the amalgamation was necessary for industry rationalization and removal of excess capacity, and that substantial efficiency gains in production and distribution would result.

The Director will continue to monitor the industry during the three year limitation period to ensure that a material change in circumstances does not alter his conclusion.

(3) *Fletcher Challenge Limited Acquisition of British Columbia Forest Products Limited.*

Fletcher Challenge Limited, a large New Zealand conglomerate which owns Crown Forest Industries Limited of British Columbia, acquired a controlling interest in British Columbia Forest Products Limited (BCFP) on February 2, 1987. This matter was brought to the public's attention when the parties announced that they had approached the Director to obtain his approval of the transaction. An inquiry was subsequently commenced in March 1987 upon receipt of an application for a formal inquiry under section 7 of the Act.

Despite the fact that the merger would reduce the number of newsprint producers in western Canada from three to two, the Director's view was that competition is not likely to be prevented or lessened substantially as a result of the merger. This view was predicated upon the potential for sales in the region by outside mills and the countervailing market power of large well-informed newspaper chains who are the major customers for newsprint.

The Director also considered the fact that a number of production and distribution efficiencies would result from the merger due to more effective coordination of inputs and transportation facilities.

On the basis of this evidence, the Director concluded that there were insufficient grounds to proceed with an application to the Competition Tribunal. The Director, however, informed the parties that he will continue to monitor the industry during the three year limitation period to ensure that a material change in circumstances does not alter his conclusion.

(4) *Compagnie des Machines Bull and Honeywell Information Systems*

In January 1987 the Bureau commenced review of a proposed merger concerning Compagnie des Machines Bull of France and Honeywell Information Systems. Pursuant to this merger, Bull acquired a 42.5 percent share of the new company, Honeywell Bull Inc., Honeywell retained 42.5 percent of the company and Nippon Electric Company acquired 15 percent. The new company is to carry on the business formerly conducted by Honeywell Information Systems Division and is the culmination of a long-term business and technical relationship between the three firms.

The analysis conducted by the Director indicated that the new firm would hold only a very small share of the computer market in Canada and would face ample competition from other major firms in the market.

On March 25, 1987, Compagnie des Machines Bull was informed that the Director would not oppose the merger which was subsequently completed on March 26, 1987.

(5) *Palm Dairies Acquisition by Four Western Dairy Cooperatives*

On June 17, 1986, two days before the Competition Act was proclaimed, the four major western cooperatives agreed to jointly purchase their major competitor, Palm Dairies. The merger raised a number of concerns and issues under the Act. The merged entity would have control of over 80 percent of the market for milk in most of the provinces affected.

After extensive discussions a negotiated settlement was worked out which, in the Director's view, was sufficiently comprehensive to remove his major concerns about the merger. The settlement was conditional on Tribunal approval in the form of a consent order. The Tribunal declined to grant the consent order. After initially appealing the decision, the Director decided it was preferable to leave the issues pertaining to the interpretation and application of the new consent order provisions to another day, if necessary. Consequently, as the settlement was not in effect, the Director returned to his original position that the proposed transaction, as originally structured, substantially lessened competition. In the end, the parties decided to abandon the merger. A more comprehensive discussion of the facts and issues raised in the Palm case may be found in Chapter IV.

(6) *George Weston Limited Acquisition of the Chocolate Confectionery Operations of Cadbury Schweppes Canada Inc.*

The acquisition of the confectionery operations of Cadbury Schweppes Canada Inc. by the William Neilson Division of George Weston Limited was announced on January 13, 1987. The subsequent inquiry by the Director indicated that, while the merger would increase market concentration, effective competition would remain, and there were no significant barriers to import competition. Substantial efficiency gains were also expected to result from the transaction. Consequently, the Director decided to discontinue the formal inquiry resulting from a six-resident application. Further details of this case can be found in Chapter IV.

(7) *Teleglobe Canada Inc. and Memotec Data Inc.*

As part of the government's privatization initiative, during the year bids were invited for the purchase of Teleglobe Canada Inc., a Crown corporation. A clause that ensures the application of the Act to any change in control was incorporated into the legislation providing for the privatization of Teleglobe Canada. In March 1987 the government completed the sale of Teleglobe to Memotec Data Inc. In that regard, an advance ruling certificate was issued in respect of the sale to the vendor, Canadian Deposit Insurance Corporation, which, on behalf of the government, was responsible for the privatization of Teleglobe.

(8) *Pacific Western Airlines Corporation and Canadian Pacific Airlines*

On January 30, 1987, Pacific Western Airlines Corporation purchased Canadian Pacific Airlines. The transaction created the second largest air carrier in Canada with an estimated market share of thirty percent. Following a review of the transaction, the Director concluded that, at that point in time, the transaction was not likely to result in a substantial lessening of competition in the domestic air transport industry. The main reasons for this decision were

that significant competition would remain after the merger, entry and exit barriers to the industry were not high and the proposed deregulation of the Canadian domestic airline industry would make entry and exit even freer. However, the Director will be monitoring the industry during the three year limitation period to ensure that a material change in circumstances does not alter his conclusion.

(9) *Cooper Industries (Canada) Inc. Acquisition of certain assets of Roper Canada Limited*

On February 13, 1987 Cooper Industries (Canada) Inc. purchased the drapery hardware assets of Roper Canada Limited. After a review of the transaction, the Director concluded that the transaction would not lessen competition substantially in view of the low level of market concentration in the affected industry, the existence of significant import competition and the market power of large purchasers. An advance ruling certificate was issued in respect of this transaction.

(10) *Cineplex Odeon Corporation Acquisition of the theatre assets of Compagnie France Film*

During the year Cineplex Odeon Corporation purchased the theatre assets of Compagnie France Film which operated a number of cinemas in the province of Québec. Following a review of the transaction, the Director issued an advance ruling certificate in September 1986. The certificate was conditional on the fulfilment of a number of undertakings given by the acquiring company.

In addition to these completed mergers, there were a number of public transactions under review at the end of the fiscal year. By reason of subsection 8(3) of the Competition Act, these matters were private at the fiscal year end and could not have been mentioned at that time. However, in each case the inquiries have since become public either because the case has been resolved or because an application has been made to the Tribunal. A brief description of some of these matters is given below.

(11) *Acquisition of twenty-three food floors of Woodward Stores Limited by Canada Safeway Limited*

On December 12, 1986, the above acquisition was announced. A formal inquiry was commenced following receipt of an application by six residents under section 7 of the Act. An extensive examination was undertaken with over one hundred sources of information contacted in the grocery trade, including all the major competitors and potential competitors, food manufacturers, distributors, provincial government authorities and consumer groups. Three experienced economists in the industrial organization field were retained to assist the Director's examination of this transaction. The inquiry process identified a number of city markets in Alberta and British Columbia where competition would likely be lessened substantially by the transaction. The parties were subsequently informed that an application would be made to the Competition Tribunal should the transaction proceed as proposed.

At the end of fiscal year, negotiations with the parties were continuing to see if the transaction could be restructured or certain stores disposed of which would alleviate the competition concerns raised by the original proposal. On May 20, 1987, the Director issued a press release announcing the terms of a settlement with Safeway.

(12) *Acquisition of Lomex Inc. and Paul and Eddy Inc. by Sanimal Industries Inc.*

In February, 1987, the Director commenced an inquiry into the above captioned acquisitions by Sanimal Industries Inc., owner of Alex Couture Inc., a major competitor to the acquired firms in the Québec-based waste rendering market. The transaction gives Couture a significantly increased share in the relevant market. At the end of the fiscal year, the inquiry was ongoing. However, the Director subsequently concluded that this merger was likely to lessen competition substantially, and on June 26, 1987, the Director announced that he had filed an application with the Tribunal.

(13) *Air Canada Acquisition of Austin Airways, Air Ontario and Air B.C.*

In February and April of 1987, Air Canada acquired Air B.C., Air Ontario and a 75% interest in Austin Airways. The acquisition of these commuter air carriers by the dominant national airline caused the Director to closely examine these transactions to determine if section 64 of the Act would apply. At the end of the fiscal year, this examination was ongoing. However, the Director subsequently concluded that he would not challenge the transaction. The parties were informed of his decision on June 4, 1987.

At this stage it is too early to generalize, but some salient features of the Director's experience with mergers may be noted. The provisions of the Act do not distinguish between different types of mergers, viz. horizontal, vertical and conglomerate. The Director has examined all three types of mergers though the majority of the substantive cases reviewed would be generally considered as horizontal mergers. The combined market share of the firms contemplating a merger has ranged primarily between 33 per cent and 100 per cent. In one case, where the Director issued an Advance Ruling Certificate, the combined market share was as low as 12 per cent (up to 36 per cent in one submarket). Half of the forty merger related matters which the Director has reviewed to date would meet the size thresholds of the merger prenotification provisions contained in the Act, had these provisions been in effect during the period under review. A final observation is that prospective efficiency gains arising from a particular merger have been raised by businesspersons in a number of cases but, except in a few cases, have not played a major role in the Director's decision.

In most of the cases that have given rise to extensive examination, the merging parties have come forward voluntarily well in advance of the completion of the transaction and in some instances in advance of the matter going public. This is a practice that the Director in his recent speeches has urged parties to adopt. The difficulty and expense of "unscrambling the eggs" once the transaction is complete or financial commitments made means that it is in the parties' best interest to come forward at an early stage.

Merger analysis is often not an easy task since, in most cases, the Director has to gauge the future effects of a transaction rather than gather evidence of events that have already occurred. To assist in arriving at the most informed decision possible within the limited time available, the Director has made greater use of legal, accounting, economic and industry experts than in past years. Also, to ensure that mergers are handled in an efficient, consistent and expeditious manner, a separate merger branch has been created within the Bureau to handle all merger and prenotification matters. The Director has indicated that merger cases are often well suited to a negotiated settlement. The use of such settlements in appropriate cases is designed to achieve competition policy objectives at considerably less cost to the public and the parties concerned, and in more expeditious fashion than may otherwise be the case.

5. Decisions, Reports and Others Matters of Special Interest

(1) *Investigatory Powers*

The investigatory powers of the Director were significantly changed from those previously available to him by the enactment of Bill C-91. These changes were made because the provisions of the Combines Investigation Act authorizing the Director to enter premises and seize documentary evidence had been struck down by the Supreme Court of Canada[1] in 1984 for inconsistency with section 8 of the Charter of Rights and Freedoms, while those provisions relating to orders for oral examinations and the production of documents had been challenged before a number of courts.[2] During the period between the judicial repudiation of the search powers conferred by the former Act and the passage of the new Competition Act, the Director had recourse to the search powers provided by the Criminal Code. Accordingly, during the year, decisions were rendered relating to the Director's use of investigatory powers under the three statutes.

(a) Search and seizure pursuant to the Combines Investigation Act

In *Commodore Business Machines Ltd. v. Director of Investigation and Research*,[3] the applicant, facing a preliminary inquiry on several charges under the Act, applied to the

Supreme Court of Ontario for an order quashing an authorization to search given pursuant to section 10 of the Combines Investigation Act in May, 1983, before the Supreme Court of Canada had struck down section 10. The Court held that the continued retention of documents seized pursuant to section 10 offended the Charter and quashed the authorization to search. However, the Court exercised its discretion to allow the Director to retain those documents and related copies and notes which he or his agent deemed necessary for the prosecution of offences, emphasizing that this decision would not affect the final determination as to the admissibility of any documents tendered in evidence in the proceedings. At year-end, Commodore had served notice of an appeal from this decision.

One of the principal issues considered by the Manitoba Court of Appeal in *R. v. Dairy Supplies Ltd.*,[4] was the admissibility in evidence of documents seized pursuant to section 10 after the Charter of Rights was proclaimed but before any superior court had held that the section was unconstitutional. The trial judge, considering the decision of the Supreme Court of Canada in *Therens*,[5] had excluded the documents from evidence. The Court of Appeal noted that there are a number of factors to be taken into account in deciding on the admissibility of evidence obtained in breach of a Charter right, such as the nature and extent of the illegality, the manner in which the evidence was obtained, the good faith or lack thereof of the persons who obtained the evidence, whether the accused's rights under the Charter were knowingly infringed, the seriousness of the charge, the nature of the evidence obtained and the public's attitude toward the particular offence charged. It was also noted that in this case there was no evidence of any bad faith on the part of the officers who executed the search and that the documents seized were in existence before the illegal search. The Court held that, since the unconstitutional seizure in this case had not in any sense created or led to self-incrimination, the evidence was not of a kind to require a ruling of inadmissibility by the trial judge. At year end, this case was under appeal to the Supreme Court of Canada.

(b) Search and seizure pursuant to the Criminal Code

In *Trans Canada Glass Ltd. v. The Queen*,[6] the Supreme Court of Ontario dismissed a motion to quash search warrants issued by a Provincial Court judge pursuant to section 443 of the Criminal Code. The Court held that the description of the alleged offence in a search warrant is sufficient if, on a reading of the warrant as a whole, it describes to a reasonable person in a very general way the nature of the offence and the manner of committing it. It also held that the description in a warrant of things to be searched for and seized must be such that the discretion as to what is to be searched for and seized is exercised by the issuing justice and not by the officer executing the warrant.

In a later judgment,[7] the same Court dismissed applications to quash detention orders which had been made with respect to documents seized in this inquiry and another unrelated inquiry. It was held that a justice has jurisdiction to order the detention of documents which fall within the description in the warrant, and which are potentially relevant to the offence set out in the warrant, if they are required for the purposes of an investigation, preliminary hearing or trial. The Court agreed with the judge who had made the detention orders that a justice exercising the powers conferred by section 446 of the Code on an application for a detention order is not a "court" within the meaning of subsection 24(1) of the Charter, and thus has no jurisdiction to entertain an application under subsection 24(1). The Court also expressed the view that an application for an initial detention order under subsection 446(1) of the Code should be made and heard *ex parte*. The decisions on the two applications are under appeal.

In *Director of Investigation and Research v. Tele-Direct (Publications) Inc.*,[8] the Provincial Court of Ontario granted an application made pursuant to section 446 of the Code and subsection 17(5) of the Combines Investigation Act for the initial detention of documents seized pursuant to Criminal Code search warrants in the course of an inquiry. The Court held that, on such an application, it was the wrong forum to hear complaints about alleged breaches of the Charter arising in connection with a search. On a further application,[9] an order for the detention of the seized documents for one year was granted. The respondents had argued that many of the documents seized were outside the terms of the search warrants because of their date, geographical area or subject matter and that the justice accordingly had

no authority to order their detention. The Court, however, held that the language of the search warrants covered the seizure of the documents in question. It found that in view of the nature of the proposed charge, the complexity of the background factual setting, the virtual impossibility of specifying each and every document pertaining to the alleged activity, the whole language of the warrants, and considering that there could be no doubt in the minds of the persons searching as to what was to be searched for and seized, the descriptions in the warrants of the documents to be seized were more than adequate. At year-end, an appeal from this decision had been initiated.

In 1984, documents were seized pursuant to Criminal Code search warrants from a number of companies involved in the municipal castings industry in British Columbia. The warrants had been quashed by the British Columbia Court of Appeal in 1985,[10] but the formal order made no provision for the disposition of the documents seized which were being held by a justice of the peace. On a subsequent application, the Court of Appeal ordered the documents returned to their original owners within ten days unless the Crown obtained a fresh search warrant within that time.[11] The Supreme Court of Canada denied leave to appeal from this decision.

However, in the meantime the Crown obtained a new warrant and seized the documents from the justice of the peace. The persons who were originally searched then applied to quash the new warrant. In *Titan Industries Ltd. v. A.G. Can.*,[12] the British Columbia Supreme Court refused a motion for leave to cross-examine the investigating officer who had sworn the information to obtain the fresh warrant, holding that an informant may only be cross-examined on an information with respect to matters which may indicate a jurisdictional error in the issuance of the warrant. The Court noted that cross-examination of an informant as to his veracity may be done only where the applicant shows a *prima facie* case of deliberate falsehood or omission or reckless disregard for the truth. It held that although a few of the grounds in the information were questionable, the balance standing by themselves would have been sufficient as a matter of law to permit the justice who issued the warrant to come to the conclusion that there might reasonably be documents and other things existing which would reasonably show that the alleged offence might have been committed. At year-end, the application to quash the fresh warrant was still pending.

In *McIntosh Paving Co. v. Director of Investigation and Research*,[13] the Ontario Supreme Court dismissed an application to quash a number of search warrants issued pursuant to section 443 of the Criminal Code. Prior to hearing the application, the applicants were denied leave to cross-examine the officer who swore the information to obtain the warrants. The Court held that before cross-examination of the informant should be permitted, an allegation of deliberate falsehood or omission or reckless disregard for the truth should be made. The Court also ruled that a justice of the peace located in Ottawa who has been appointed as a justice for the Province of Ontario has jurisdiction to issue search warrants to be executed in another county. The applicants argument that a true copy of the information should have been produced to the persons searched at the time of the search was rejected as was the argument that an informant must state in an information his personal belief in the veracity of all the facts given to him and included in the information. At year-end, the applicants had initiated an appeal of this decision.

(c) Search and seizure pursuant to the Competition Act

The first application for a warrant pursuant to the search provisions of the new Act was made in *Director of Investigation and Research v. Irving Equipment*.[14] In the same inquiry,[15] the Federal Court — Trial Division granted an application by the Director for the retention of records seized pursuant to warrants issued under section 13 of the Competition Act. The Court granted an order sought by the persons searched for confidential retention by the Court of the informations to obtain the warrants, with access limited to the persons searched, the Director and persons authorized by them, unless and until charges were laid, or the applicant gave access.

(d) Other investigatory powers

In *Thomson Newspapers Ltd. v. Director of Investigation and Research*,[16] the Ontario Court of Appeal dismissed an appeal and allowed a cross-appeal from a decision of the Ontario Supreme Court on an application challenging the constitutional validity of section 17 of the Act in light of the provisions of sections 7 and 8 of the Charter of Rights. The individual appellants, all officers of the appellant Thomson Newspapers Ltd., had been ordered to give evidence and produce documents in connection with an inquiry. Mr. Justice Grange delivered the reasons for the Court of Appeal agreeing with the lower Court decision that the provisions for the oral examination of witnesses in section 17 of the Combines Investigation Act are not in conflict with the guarantee of the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice provided by section 7 of the Charter. He agreed that the only rights against self-incrimination now known to our law are those found in sections 11(c) and 13 of the Charter, neither of which rights was applicable to the appellants' situation.

The Court of Appeal allowed the Director's cross-appeal from the lower Court finding on section 17 orders for the production of documents. The Court noted that the recipient of a notice under section 17 cannot be penalized for failure to obey the order without the matter being considered by an impartial judicial arbiter pursuant to subsection 17(3) of the Act. It also noted that in another inquiry both the Restrictive Trade Practices Commission and the Federal Court of Appeal had entertained proceedings to amend an order made pursuant to section 17. The Court held that without formulating a general rule as to what constitutes a seizure, it was sufficient to say that the prohibition against unreasonable search or seizure in section 8 of the Charter does not encompass section 17 orders for the production of documents since the person affected is afforded a reasonable opportunity to dispute the order and to prevent the surrender of the documents. It further held that in the event this was wrong, and section 17 orders do constitute "seizures", then the seizures were reasonable, given that section 17 only orders the production of documents subject to the protection of subsection 17(3), and that orders under section 17 have nothing in common with a search as regards the intrusion into the home and privacy of individuals.

At year-end, Thomson had applied for leave to appeal the decision of the Court of Appeal to the Supreme Court of Canada. (Leave was granted on June 25, 1987.)

On March 26, 1987, the Supreme Court of Canada handed down its judgment in *Irvine v. Canada (Restrictive Trade Practices Comm.)*,[17] dismissing an appeal from a decision of the Federal Court of Appeal relating to oral examinations of witnesses ordered pursuant to section 17 of the Combines Investigation Act. (The Federal Court of Appeal decision is described in detail at page 19 of the Director's Annual Report for 1982.) The Supreme Court considered a number of issues including the validity of the Director's inquiry absent any demonstration of his reasons for believing an offence had been committed, the role of counsel pursuant to section 20 of the Act in such examinations, and the failure of the Hearing Officer and the Director to obtain testimony from an individual who had been ordered to appear for examination but objected to testifying in the presence of others. The appellants were persons who had been ordered to appear for examination or persons whose conduct was being inquired into.

The Court held that the Director was under no duty, at that stage of the investigatory process, to disclose to the appellants his reasons for believing that conditions existed which justified an inquiry. The Court decided that neither subsection 20(1) of the Act nor the doctrine of fairness provided the appellants with a right to cross-examine witnesses examined pursuant to section 17. It was sufficient that the Hearing Officer allowed all parties to be represented by counsel who could object to improper questioning and re-examine their clients. Furthermore, the Hearing Officer had the discretion to exclude a potential witness while others were being examined. Finally, the Court had no legal basis to respond to an application for mandamus aimed at compelling either the Hearing Officer or the Director to obtain testimony from an individual who had been ordered to appear for the purposes of examination, but whom the Director chose not to examine when he objected to testifying in the presence of others. Although the Court did not address the impact of the Charter on section 17 and subsection

20(1) of the Act, having denied an application for the stating of a question as to constitutional validity, it noted that the Charter did not apply to the case because the rulings at issue were made before the Charter came into force.

(2) *Other Charter Matters*

(a) Direct indictments

In *R. v. Canada Packers Inc.*,[18] the Alberta Court of Queen's Bench dismissed an application for an order quashing or staying proceedings on certain counts of an indictment preferred by the Attorney General of Canada pursuant to paragraph 507(3)(b) of the Criminal Code. At the preliminary inquiry, the presiding judge had refused to order the accused to stand trial on an included offence relating to certain conduct. However, the Attorney General subsequently preferred an indictment which included charges based wholly or in part on that conduct. At the beginning of its trial, Canada Packers objected to these charges on the grounds of inconsistency with section 7 of the Charter which guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Mr. Justice Lomas held that subsections 507(2) and (3) of the Criminal Code, to the extent that they permit the Attorney General to prefer an indictment against an accused after he has been discharged from a preliminary inquiry, are not inconsistent with section 7 of the Charter. He also concluded that the manner in which the Attorney General had exercised his discretion in this case did not infringe Canada Packers' rights. At year-end, the trial of Canada Packers had not been concluded.

(b) Limitation on due diligence defence in subsection 37.3(2) of the Act

Subsection 37.3(2) of the Act provides a defence to persons charged with offences under section 36 or 36.1 in limited circumstances. Were it not for subsection 37.3(2), these offences would be considered strict liability offences as defined by the Supreme Court of Canada in *R. v. City of Sault Ste. Marie*.[19] However, the statutory defence provided by subsection 37.3(2) is more restricted in that the accused must establish not only that the act or omission giving rise to the offence with which he is charged was the result of error and that he took reasonable precautions and exercised due diligence to prevent the occurrence of such error, but also, pursuant to paragraphs 37.3(2)(c) and (d), that he took reasonable measures to bring the error to the attention of the class of persons likely to have been reached by a representation or testimonial and that these measures were taken forthwith after the representation was made or the testimonial was published except where the representation or testimonial related to a security.

In *R. v. Westfair Foods Ltd.*,[20] the Manitoba Court of Queen's Bench found that paragraphs 37.3(2)(c) and (d) contravene section 7 and paragraph 11(d) of the Charter, that they do not constitute reasonable limits that can be demonstrably justified in a free and democratic society within the meaning of section 1 of the Charter and that they are therefore unconstitutional and of no force or effect. The Court also held that a corporation such as Westfair is entitled to the protection afforded to "everyone" by section 7 and to "any person" by paragraph 11(d) of the Charter. In consequence, an appeal from Westfair's acquittal on a charge of making a false or misleading representation was dismissed.

In *R. v. Total Ford Sales Ltd.*,[21] the Ontario District Court dismissed an appeal from the conviction of the accused on several counts under paragraph 36(1)(a) of the Act, based on the argument that the appellant's rights under section 7 and paragraph 11(d) of the Charter had been violated. The Court held that paragraph 36(1)(a) of the Act creates a strict liability offence, and that even if the pre-trial admission requirements of paragraphs 37.3(2)(c) and (d) were struck down as contravening the presumption of innocence guaranteed by paragraph 11(d) of the Charter, that in itself would not necessarily render the balance of subsection 37.3(2) unconstitutional. The accused could still resort to the modified statutory defence in paragraphs 37.3(2)(a) and (b), or to the common law defence of due diligence if the totality of subsection 37.3(2) were struck down. The accused would also have available a defence based on onus of proof. The Court held that, on the evidence before it, there was nothing to suggest that the defendant was capable of making out a defence based on onus of proof, subsection

37.3(2), or due diligence as defined at common law and that, accordingly, the conviction was properly registered.

(3) *Bid-rigging*

In *R. v. Coastal Glass & Aluminum Ltd.*,[22] the British Columbia Court of Appeal dismissed the Crown's appeal from the acquittal of the accused on three counts of bid-rigging. (The decision at trial is described in the Annual Report for 1985 beginning at page 24.)

The accused on two of the counts under appeal were members of subtrades who, following industry practice, submitted agreed-on price quotations to general contractors who had been invited to submit bids for the construction of building complexes. The trial judge concluded that there had been no call or request for bids or tenders directed specifically to the accused subtrades as contemplated by paragraph 32.2(1)(b) of the Act and that the prices submitted by them to the general contractors did not amount to bids or tenders. He therefore acquitted the accused because their conduct was not caught by the statute. The Court of Appeal agreed that the price quotations at issue were submitted to the candidates for general contractor in accordance with industry practice and that they could not be said to have called for bids or tenders. The Court held that it is essential to the working of section 32.2 that there be an identifiable "person" who has requested or called for bids and that that person have no knowledge of the arrangement or agreement between bidders. Therefore, the Court upheld the acquittals.

The other acquittal arose from a situation in which one of the two accused invited to submit bids on a project was not interested in getting the job but simply wanted to put a price before the general contractors. The "interested" accused accommodated the "disinterested" accused by providing it with enough information about its own bid to submit a price which was expected to be higher than the interested accused's bid. At trial, it was found that the interested accused had bid competitively notwithstanding its provision of information to the other accused and that there had been no mutual arriving at an understanding or agreement. The Court of Appeal held that since the trial judge had found as a fact that an agreement or arrangement had not been proved beyond a reasonable doubt, it was not open to them to say that he had erred in acquitting the accused.

The Crown was denied an extension of time to seek leave to appeal this decision to the Supreme Court of Canada.

(4) *False or misleading representation*

In *R. v. Postal Promotions Ltd.*,[23] the Ontario District Court allowed the accused's appeal from conviction on three counts under paragraph 36(1)(a). The representations, which were found to be misleading, concerned books on genealogy prepared by an American company and were contained in letters also prepared by that company. The appellant labelled and mailed the letters using labels supplied by the American company, received orders and payments and forwarded the orders to the American company. The appellant also labelled and mailed pre-packaged books to customers who had ordered them. The appellant held money received in payment for the books in a trust account, provided refunds to dissatisfied customers and, after deducting its fees, sent the balance to the American company. The Court found that the appellants had no input into the letters and no authority to change their contents and that there was no evidence that the appellants were aware of the contents of the letters. The appeal from conviction was allowed on the basis that the appellants could not be made responsible for the offence as principals because they had neither caused the representations to be made nor imported the goods in question into Canada, nor could they be held liable as aiders or abettors under section 21 of the Criminal Code. It held that even when an offence is one of strict liability for a principal, there must be *mens rea* on the part of an aider or abettor. While it is not necessary to prove that the alleged aider or abettor knew that the conduct he was aiding constituted an offence, it is necessary to show that he had knowledge of the circumstances constituting the offence. The Court concluded that, based on the evidence presented at trial, there was nothing to support the view that the appellant had known that the letters contained misleading representations, and, consequently, the requisite *mens rea* was lacking. At year-end, the Crown had applied for leave to appeal from this decision.

In *R. v. Independent Order of Foresters*,[24] the Ontario District Court held that the accused should be acquitted on charges of making a false or misleading representation on the grounds that the representations in question, contained in advertisements offering employment for commissioned salesmen, did not promote directly or indirectly the supply or use of a product or any business interest, in the sense that those words are used in section 36 of the Act. The Court also found that the representations had not been shown beyond a reasonable doubt to have been false or misleading in a material respect. At year-end, the Crown had initiated an appeal from the acquittals.

(5) *Price maintenance*

In *R. v. Salomon Canada Sports Ltd.*,[25] the Quebec Court of Appeal allowed an appeal from conviction on three counts of price maintenance, one contrary to paragraph 38(1)(a) and two contrary to paragraph 38(1)(b) of the Act. The Court held that the defence of reasonable belief that a person is engaging in loss leadering afforded by paragraph 38(9)(a) is not available on a charge of price maintenance contrary to paragraph 38(1)(a). However, it allowed the accused's appeal from conviction on the grounds that, while the accused had commented on a retailer's prices and discussed them and offered complaints, suggestions and requests, it had not used any of the means of influencing prices prohibited by paragraph 38(1)(a). With respect to the defence afforded by subsection 38(9) to charges under paragraph 38(1)(b), the Court noted that the issue was not whether the retailer in question was actually guilty of loss-leadering or bait and switch practices but whether the accused had satisfied the court that it and anyone upon whose report it had depended had reasonable cause to believe and did believe that the retailer was engaging in those practices. The Court was satisfied that in the circumstances the accused had satisfied this onus.

In *R. v. Sunoco Inc.*,[26] the Ontario District Court found the accused guilty of price maintenance contrary to paragraph 38(1)(a) of the Act and not guilty on a charge under paragraph 38(1)(b). The Court found that Sunoco had an oral agreement with the retail gasoline dealer in question that Sunoco would provide the dealer with price support in the form of a Temporary Voluntary Allowance as long as the dealer matched what Sunoco said was similar and like competition and did not initiate downward price changes. In effect, the dealer was given an allowance to permit it to match gasoline prices set by other major branded dealers but not to enable it to match lower prices set by independent unbranded dealers or to initiate price drops. It also found that when the dealer reduced its prices to compete with an unbranded dealer its allowance was frozen and eventually the business relationship between Sunoco and the dealer was terminated. The Court found that Sunoco's Temporary Voluntary Allowance program was part of Sunoco's pricing policy and violated paragraph 38(1)(a) of the Act because it indirectly discouraged the dealer from reducing its price. A fine of $200 000 was imposed on Sunoco on the paragraph 38(1)(a) conviction. This is the largest fine ever imposed under the price maintenance provisions of the Act. At year-end, Sunoco had appealed from the conviction and sentence, and the Crown had appealed from the acquittal.

(6) *Regulated conduct defence*

Last year's Annual Report discussed two judgments[27] demonstrating the limited scope of the regulated conduct defence. Two decisions this year which also touched on the scope of the defence are of interest.

In *Waterloo Law Assn. v. A.G. Can.*,[28] the Supreme Court of Ontario dismissed an application to quash search warrants issued in respect of the premises of several officers of the Association. The applicants had argued that the activities at issue were governed by the Law Society of Upper Canada pursuant to the Law Society Act and were therefore not subject to the Competition Act. The Court recognized that a lawyer or law association ought to be able to claim an exemption, in appropriate circumstances, in answer to a prosecution under the Act, where the activities which give rise to the prosecution are activities required or authorized by the governing body of the profession acting within powers delegated to it by a valid provincial statute. However, the Court noted that the regulated industries exemption to the combines legislation has been traditionally dealt with as a defence to a charge. The Court held that as it was not clear that the Law Society had put into effect a scheme requiring or authorizing law-

yers to adhere to uniform fee schedules, and it did not appear that the county law associations had been delegated any statutory authority to enforce a minimum fee schedule, it was not appropriate in the circumstances to deal with the constitutional aspects of the matter at that stage of the investigation. The Court left the entire matter to be determined in whatever proceedings might ensue under the Competition Act. At year-end, an appeal from this decision had been launched by the Law Association.

In *R. v. Independent Order of Foresters*,[29] discussed earlier, the Ontario District Court refused to stay an indictment against the accused on the grounds that it was part of a regulated industry. The Court ruled that provincially regulated industries are not shielded from the possibility of prosecution under the Act. Rather, the Court noted, the cases emphasize that once a prosecution has been put forward and the defendant company or industry has shown itself to be a regulated industry, then it ought to be shielded from conviction because the provincial regulations authorize it to do things which would otherwise be illegal under the federal statute. In each case, the Court stated that the particular activities or allegations must be measured against the provincial regulations to see if, in fact, the provincial regulatory agency has addressed the kind of behaviour which is the subject of the prosecution. After hearing the evidence in the case, the Court decided that the accused was entitled to the benefit of the regulated conduct defence on the basis that its life insurance activities are publicly regulated by the Superintendent of Insurance for Ontario. At year-end, the Crown had appealed the acquittals in this case.

(7) *Other matters*

In *Director of Investigation and Research v. Broadcast News Ltd.*,[30] the Restrictive Trade Practices Commission ruled that, pursuant to subsection 10(2) of the Commission's rules, the Director of Investigation and Research was at liberty to unilaterally withdraw an application made to the Commission under Part IV.1 of the Combines Investigation Act up to the time when the actual proof and hearing commenced. Electronic News Ltd., which had been granted conditional intervenor status in the matter before the Director withdrew his application and objected to the Director's withdrawal of the application, applied to the Federal Court of Appeal for a review of this decision. The Court dismissed the application,[31] holding that the Commission had been correct in deciding that it was without jurisdiction to hear the matter. The Court also rejected an argument by Electronic News based on section 7 of the Charter of Rights and subsection 2(e) of the Bill of Rights.

In *Austin v. Minister of Consumer and Corporate Affairs*,[32] the Federal Court — Trial Division denied an application for a writ of *mandamus* ordering the Minister of Consumer and Corporate Affairs to review a decision by the Director to discontinue an inquiry held under section 8 of the Act. The Court found that the Minister must exercise the discretion conferred on him by the Act to review a decision by the Director to discontinue an inquiry within a reasonable time. However, it noted that *mandamus* ordering an authority to perform an act will not issue unless there is a legal duty on the part of the authority to perform which the authority has clearly refused to perform. The Court was not satisfied that the Minister had refused to review the Director's decision or unreasonably delayed in doing so, and, consequently, found that the application was premature.

(8) *Report of the Restrictive Trade Practice Commission — Competition in the Canadian Petroleum Industry*

After a five year hearing process, the Restrictive Trade Practices Commission reported to the Minister of Consumer and Corporate Affairs on its analysis, conclusions and recommendations on the state of competition in the Canadian petroleum industry. The report entitled *Competition in the Canadian Petroleum Industry* was tabled in the House of Commons by the Minister on June 13, 1986.

The commission's inquiry focussed on industry structure, firm conduct and the regulatory environment in all sectors of the Canadian petroleum industry from the 1950's to the present.

The Commission examined two distinct subjects. First, it examined the Director's allegation that consumers were overcharged $12 billion in the 1958-1973 period as a result of the

exercise of market power by the oil companies. Second, and what the Commission felt was its more important task, it examined the workings of current petroleum markets in Canada to determine whether there are monopolistic or restrictive practices that are contrary to the public interest and, if so, whether remedies are available to eliminate or reduce their effects in the marketplace.

As to alleged $12 billion overcharge, the Chairman stated that there "was no proof placed before the Commission that Canadian petroleum companies overcharged consumers by 12 billion dollars or that, indeed, any measurable excess costs were passed on in any significant degree between 1958 and 1973." However, Commissioner Roseman concluded that there was an excess cost for imported crude oil, but its impact on product prices to consumers could not be accurately measured.

Regarding the existence of any inter-company agreements to restrict competition, "the Commission found no evidence of collusion in any sector of the industry". While the Director's case technically did not include a direct allegation of collusion, the Commission stated that it wished to make its view on this matter clear.

The Commission made twelve recommendations, which related primarily to the refining and marketing sectors. Six of the recommendations pertained to possible amendments to the Combines Investigation Act while others dealt with specific practices of the oil companies that the Commission felt discouraged or restricted competition in the industry. Some recommendations focussed on government policies, including those relating to product imports, that have adversely affected competition in this industry. Finally, certain recommendations were directed at improving the public accountability of Petro-Canada and encouraging it to adopt pro-competitive policies.

As Bill C-91 was still before Parliament when the Commission issued its report, many of its recommendations, directly or indirectly, were incorporated in amendments to the Competition Act. For example, the recommendation that the new legislation confer a jurisdiction on the reviewing body to grant interim orders in matters affecting supply was met by subsection 76(1) of the Act. As well, the recommendation that Petro-Canada be made subject to the provisions of the Act was met by section 2.1. Three other legislative recommendations were partially incorporated. (Further information on this matter can be found in Chapter IV of this report.)

NOTES

1. *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, 55 A.R. 291, 11 D.L.R. (4th) 641, [1984] 6 W.W.R. 577, 14 C.C.C. (3d) 97, 2 C.P.R. (3d) 1.

2. See, for example, *Ziegler v. Director of Investigation and Research*, [1984] 2 F.C. 608, (1983), 8 D.L.R. (4th) 648, 51 N.R. 1, 81 C.P.R. (2d) 1 (C.A.), and *R.L. Crain Inc. v. Couture* (1983), 30 Sask. R. 191, 6 D.L.R. (4th) 478, 10 C.C.C. (3d) 119 (Q.B.).

3. *Commodore Business Machines Ltd. v. Director of Investigation and Research* (1986), 57 O.R. (2d) 449, 34 D.L.R. (4th) 516, 30 C.C.C. (3d) 321, 12 C.P.R. (3d) 532 (H.C.).

4. *R. v. Dairy Supplies Ltd.*, [1987] 2 W.W.R. 661, 44 Man. R. (2d) 275 (C.A.).

5. *R. v. Therens*, [1985] 1 S.C.R. 613, 18 D.L.R. (4th) 655, 18 C.C.C. (3d) 481.

6. *Trans Canada Glass Ltd. v. The Queen*, Ont. H.C. May 20, 1986 (unreported).

7. *Famous Players Ltd. v. Director of Investigation and Research; Trans Canada Glass Ltd. v. Director of Investigation and Research* (1986), 29 C.C.C. (3d) 251, 11 C.P.R. (3d) 161 (Ont. H.C.).

8. *Director of Investigation and Research v. Tele-Direct (Publications) Inc.*, Ont. Prov. Ct., June 12, 1986 (unreported).

9. *Director of Investigation and Research v. Tele-Direct (Publications) Inc.*, Ont. Prov. Ct., Nov. 13, 1986 (unreported).

10. *Re Dobney Holdings Ltd.* (1985), 18 C.C.C. (3d) 238, 5 C.P.R. (3d) 84 (B.C.C.A.).

11. *Dobney Foundry Ltd. v. A.G. Can.*, [1987] 1 W.W.R. 281, (1986), 29 C.C.C. (3d) 285, 11 C.P.R. (3d) 285 (B.C.C.A.); leave appeal refused (1986), 73 N.R. 398 (S.C.C.).

12. *Titan Industries Ltd. v. A.G. Can.* (1986), 31 C.C.C. (3d) 442 (B.C.S.C.).

13. *McIntosh Paving Co. v. Director of Investigation and Research*, Ont. H.C., March 18, 1987 (unreported).

14. *Director of Investigation and Research v. Irving Equipment*, F.C.T.D., Dec. 1, 1986 (unreported).

15. *Director of Investigation and Research v. Irving Equipment*, F.C.T.D., Dec. 1, 1986 (unreported).

16. *Thomson Newspapers Ltd. v. Director of Investigation and Research* (1986), 57 O.R. (2d) 257, 34 D.L.R. (4th) 413, 17 O.A.C. 330, 30 C.C.C. (3d) 145, 55 C.R. (3d) 119, 12 C.P.R. (3d) 97 (C.A.); (1986), 54 O.R. (2d) 143, 26 D.L.R. (4th) 501, 9 C.P.R. (3d) 72, 25 C.C.C. (3d) 233, 21 C.R.R. 1 (H.C.).

17. *Irvine v. Canada (Restrictive Trade Practices Commission* (1987), 74 N.R. 33 (S.C.C.); [1982] 2 F.C. 500, (1981), C.C.C. (2d) 108, 62 C.P.R. (2d) 1 (C.A.).

18. *R. v. Canada Packers Inc.* (1986), 71 A.R. 173 (Q.B.).

19. *R. v. City of Sault Ste. Marie*, [1978] 2 S.C.R. 1299, 85 D.L.R. (3d) 161.

20. *R. v. Westfair Foods Ltd.* (1986), 41 Man. R. (2d) 205, 11 C.P.R. (3d) 345, 33 B.L.R. 163 (Q.B.).

21. *R. v. Total Ford Sales Ltd.*, Ont. Dist. Ct., Feb. 17, 1987 (unreported).

22. *R. v. Coastal Glass & Aluminum Ltd.*, (1986), 27 C.C.C. (3d) 289, 11 C.P.R. (3d) 391 (B.C.C.A.); (1984), 17 C.C.C. (3d) 313, 8 C.P.R. (3d) 46 (B.C.S.C.).

23. *R. v. Postal Promotions Ltd.* (1986), 11 C.P.R. (3d) 215 (Ont. Dist. Ct.).

24. *R. v. Independent Order of Foresters*, Ont. Dist. Ct., Jan. 13, 1987 (unreported).

25. *R. v. Salomon Canada Sports Ltd.* (1986), 28 C.C.C. (3d) 240 (Que. C.A.).

26. *R. v. Sunoco Inc.* (1986), 12 C.P.R. (3d) 79 (Ont. Dist. Ct.).

27. *R. v. British Columbia Fruit Growers Association*, B.C.S.C. June 28, 1985 (unreported); *R. v. Air Canada* Ont. Prov. Ct. March 25, 1986 (unreported).

28. *Waterloo Law Assn. v. A.G. Can.* (1986), 58 O.R. (2d) 275, 35 D.L.R. (4th) 751, 31 C.C.C. (3d) 564 (H.C.).

29. *R. v. Independent Order of Foresters*, trial decision, supra footnote 26, and ruling at (1986), 13 C.P.R. (3d) 563 (Ont. Dist. Ct.).

30. *Director of Investigation and Research v. Broadcast News Ltd.* (1986), 9 C.P.R. (3d) 429 (R.T.P.C.).

31. *Electronic News Group Inc. v. Broadcast News Ltd.*, F.C.A. March 23, 1987 (unreported).

32. *Austin v. Minister of Consumer and Corporate Affairs* (1986), 12 C.P.R. (3d) 190 (F.C.T.D.).

CHAPTER III

MANUFACTURING BRANCH

1. Activities

The Manufacturing Branch is responsible for the conduct of all inquiries under the Act with respect to the manufacturing sector of Canadian industry, excluding the manufacturing sectors of the pulp and paper and petroleum industries which are the responsibility of the Resources Branch. The Manufacturing Branch is also concerned with matters relating to the construction industry.

The main function of the Branch is to undertake industrial and economic analysis based on information obtained from a broad variety of sources with respect to alleged restrictions of competition in the manufacturing sector, and to conduct inquiries into those situations where inquiry is warranted. Such analysis is for the purpose of determining whether there is reason to believe that violations of any provisions of Part V of the Act (with the exception of those sections relating to misleading advertising and deceptive marketing practices) have occurred or that grounds exist for the making of an order by the Tribunal under Part VII of the Act.

The Branch is also concerned with inquiries relating to possible abuses of the rights and privileges conferred by patents and trade marks, where such abuses are related to the activities of firms in the industries for which it is responsible. It also maintains a general surveillance of competitive activities and competition policy issues in those industries so as to identify problem areas requiring analysis or investigation. From time to time it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by Investment Canada.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 21(1) of the Act

SECTION 32

(1) *Soft Drinks — Manitoba*

This inquiry commenced in July 1980 as a result of information obtained by the Director. During the inquiry the records of two bottlers in three cities in Manitoba and two bottler franchising companies located in Ontario and British Columbia were examined pursuant to section 10 of the Combines Investigation Act.

On January 20, 1983, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On July 20, 1983, an Information was laid at Winnipeg charging Blackwoods Beverages Ltd. and Beverage Services Ltd. with one count under paragraph 32(1)(c) of conspiring to lessen, unduly, competition in the supply of soft drinks in Brandon, Manitoba between March 1, 1977 and September 30, 1978. The Information also contained two counts under paragraph 38(1)(a) alleging that Blackwoods Beverages Ltd. had on two occasions attempted to influence upward the price at which Beverage Services Ltd. sold soft drinks in Winnipeg and Brandon, Manitoba.

On August 10, 1983, a further Information was laid against Blackwoods Beverages Ltd. and Coca-Cola Ltd. under paragraph 32(1)(c), alleging that both accused conspired to lessen, unduly, competition in the supply of soft drinks in Winnipeg, Manitoba, between February 1, 1980 and September 20, 1980.

Prior to the commencement of the preliminary inquiries in this matter, a motion was brought forward by the three accused, pursuant to the Constitution Act, 1982, regarding the validity and admissibility of the evidence seized pursuant to section 10 of the Combines Inves-

tigation Act. The details regarding these proceedings appear at page 24 of the 1985 Annual Report.

In summary, on appeal from the Manitoba Court of Appeal, it was decided that while the seizures under section 10 of the Act pre-dated the Charter and by virtue of the Charter were now illegal, the admissibility of the documents should be determined at trial when all the evidence and full argument on the subject have been heard. The Supreme Court of Canada denied leave to appeal, and consequently the matter was sent back for preliminary inquiry.

The preliminary inquiry with respect to the July 20, 1983 Information commenced on April 1, 1986 and was subsequently adjourned pending the court's ruling with respect to the admissibility of the seized documents. On September 15, 1986, the Court ruled the seized documents admissible. The preliminary inquiry was scheduled to resume on April 27, 1987.

SECTION 32.2

(2) *Glass and Glazing — Vancouver*

This inquiry commenced in October 1979 following receipt of information by the Director alleging that a number of Vancouver-area glass and glazing contractors were involved in bid-rigging. During the inquiry the records of seven firms were examined pursuant to section 10 of the Combines Investigation Act, and in March and July 1980 oral examinations were held in Vancouver pursuant to section 17 of the Act.

On May 15, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under section 32.2 was laid at Vancouver on May 19, 1982. The following firms were charged on one or more counts:

Coastal Glass & Aluminum Ltd.
Central Glass Products Ltd.
Bogardus, Wilson, Limited Zimmcor Company — La Compagnie Zimmcor
PPG Industries Canada Ltd. — Industries PPG Canada Ltée

The preliminary inquiry commenced on May 9, 1984 and was completed on May 24, 1984. Subsequently, the Court ordered Coastal Glass & Aluminum Ltd., Central Glass Products Ltd. and Bogardus, Wilson, Limited (amended as LOF Glass of Canada Ltd.) to stand trial. PPG Industries and Zimmcor were discharged.

The trial commenced on December 3, 1984, and was concluded on December 14, 1984. On December 19, 1984, the court found Coastal Glass & Aluminum Ltd. guilty on count one (relating to the Vancouver Law Courts building). The other accused were found not guilty on counts two, three and four. Subsequently, on January 24, 1985, Coastal Glass & Aluminum Ltd. was fined $85 000 with respect to count one.

On January 17, 1985, a notice of appeal was filed with the British Columbia Court of Appeal with respect to counts two, three and four. The British Columbia Court of Appeal heard the matter on April 22, 1986 and unanimously dismissed the appeal on May 15, 1986. On June 17, 1986, an application for extension of time to secure leave to appeal was filed with the Supreme Court of Canada, but on October 28, 1986, the Court denied the application.

SECTIONS 32, 32.2 and 38

(3) *Business Forms — Prairies*

This inquiry commenced in June 1981 following receipt of a complaint alleging illegal collusive activity on the part of certain major suppliers of business forms in the Prairie region. During the course of the inquiry, further information and evidence were obtained by the Director pursuant to sections 9 and 10 of the Combines Investigation Act.

Oral examinations pursuant to section 17 of the Combines Investigation Act began in Regina on July 5, 1982. However, on July 7, 1982, the Saskatchewan Court of Queen's Bench issued an interim injunction to prevent any further examinations in relation to this particular inquiry until such time as the Court could consider certain issues under the Charter of Rights

and Freedoms. On December 1, 1983, the Court ruled that section 17 of the Combines Investigation Act was inconsistent with section 7 of the Charter and, therefore, was of no force or effect. However, the Court also ruled that section 45 of the Combines Investigation Act was not inconsistent with the Charter. On December 12, 1983, the Crown filed an appeal with respect to the ruling on section 17. At the end of the current fiscal year, no date had been set for hearing the appeal.

On March 28, 1985, the evidence in this inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 32(1)(b) and 32(1)(c), eight counts under section 32.2 and two counts under paragraph 38(1)(a) was laid at Saskatoon on April 11, 1986 against the following companies and individuals:

Lawson Business Forms (Manitoba) Ltd.
Harold K. St. John
Alfred Dean Allen
R.L. Crain Inc.
John B. Lynch
George M. Wilson
Moore Corporation Limited
Gordon B. Wainwright
Gordon E. Menuz
James A. Scarsbrook
Paragon Business Forms (Western) Ltd.
Alfred I. Rein

All the accused were jointly charged on both counts under section 32, on four of the counts under section 32.2 and on one of the counts under paragraph 38(1)(a). In addition, the first two named accused were jointly charged on the other charge under paragraph 38(1)(a); the first ten named accused were jointly charged on two of the four remaining counts under section 32.2; and the first six accused and the last two accused were jointly charged with the final two section 32.2 charges.

The preliminary inquiry was scheduled to commence on June 1, 1987.

SECTION 38

(4) *Bigelow Canada Limited — Carpets*

This inquiry commenced in March 1981 following receipt of a complaint from a retailer alleging that a representative of Bigelow Canada Limited had discriminated against him because of his low pricing policy. In April 1981 the records of the company were examined pursuant to section 10 of the Combines Investigation Act, and in October 1981 oral examinations were held in Québec City.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 30, 1982. An Information containing one count under paragraph 38(1)(b) was laid at Québec on August 12, 1982 against Bigelow Canada Limited.

The preliminary inquiry in this matter commenced on March 31, 1983, and the accused was ordered to stand trial. On June 8, 1984, the accused was acquitted. The Crown appealed the decision on July 5, 1984.

Bigelow Canada Limited changed its name to Les Tapis Artisans (1981) Inc., which subsequently went bankrupt in November 1984. The appeal by the Crown was abandoned on July 2, 1986.

(5) *Salomon Sports Canada Ltd./Ltée — Ski Equipment*

This inquiry commenced on August 5, 1981 following receipt of complaints alleging that Salomon Sports Canada Ltd./Ltée had refused to supply certain retailers because of the retailers' low pricing policies and that Salomon had also attempted to influence upward the price at which certain retailers sold Salomon's products. During the inquiry the corporate records were

examined pursuant to section 10 of the Combines Investigation Act. In April 1982 oral examinations under section 17 of that Act were conducted in Vancouver, during which five witnesses testified under oath.

On August 9, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On February 16, 1983 an Information was laid at Montréal against Salomon Sports Canada Ltd./Ltée, containing five counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b).

Following the preliminary inquiry in May 1983 the accused was ordered to stand trial on eight counts. The trial commenced on October 24, 1983 and was concluded on November 25, 1983. On March 19, 1984 the accused was convicted on four counts under paragraph 38(1)(a) and three counts under paragraph 38(1)(b) and was acquitted on one count under paragraph 38(1)(b). On May 17, 1984, the accused was fined a total of $100 000. In addition, an Order of Prohibition was imposed. The company appealed the conviction on one count under paragraph 38(1)(a) and two counts under paragraph 38(1)(b). The appeal was heard on December 12, 1985, and on April 15, 1986, the Québec Court of Appeal allowed the appeal and entered a verdict of acquittal on the three counts, thereby reducing the fine to $57 142.85.

(6) *Sony of Canada Ltd. — Stereophonic Equipment*

This inquiry commenced in April 1982 following receipt of a complaint from a Toronto retailer alleging that Sony of Canada Ltd. had refused to supply him with stereophonic products due to his low pricing policy. During the inquiry the company's records were examined pursuant to section 10 of the Combines Investigation Act.

On March 25, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On July 19, 1983, an Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Ottawa against Sony of Canada Ltd. On September 24, 1984, the accused was ordered to stand trial on two counts under each of paragraphs 38(1)(a) and (b).

In November 1984 counsel for Sony filed a motion to quash the order to stand trial on one count under each of paragraphs 38(1)(a) and 38(1)(b). The motion was heard in Toronto on February 5, 1985, and the motion was granted. The Attorney General appealed the decision, and on October 21, 1985, the presiding judge allowed the appeal and set aside the order made on February 5, 1985. The trial commenced on February 16, 1987, continued until March 12, 1987 and is scheduled to resume on April 6, 1987.

(7) *Ziggy Jeans*

This inquiry commenced in February 1981 following receipt of a complaint from a retailer of casual clothing alleging that Lewis-Choi Enterprises Ltd., the sales agent for Western Glove Works Limited of Winnipeg, Manitoba, had refused to supply Ziggy-brand jeans to the retailer because of his low pricing policy.

Searches were conducted in February 1981 in Winnipeg, Charlottetown and Montréal pursuant to section 10 of the Combines Investigation Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(b) was laid at Charlottetown against Western Glove Works Limited and Lewis-Choi Enterprises Ltd. jointly on August 16, 1983.

On January 23, 1987, Western Glove Works Limited pleaded guilty and was convicted and fined $2 000. The charge against Lewis-Choi Enteprises Ltd. was withdrawn on the same date.

(8) *Drospo Inc. — Leather Clothing*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer of leather garments for motorcyclists. The complainant alleged that Drospo Inc. had attempted to influence upward the price at which the retailer sold the product and had subsequently refused to supply the complainant because of his low pricing policy.

On January 5, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at St-Joseph de Beauce on April 24, 1984 against Drospo Inc. The preliminary inquiry was held on March 27, 1985, and the company was ordered to stand trial on both counts. On June 5, 1985, the defence introduced a motion to quash the indictment, which motion was rejected on October 6, 1985. The trial was held on November 25, 1985. On February 4, 1986, Drospo was convicted on the count under paragraph 38(1)(a) and acquitted on the count under paragraph 38(1)(b). On March 4, 1986, the company was fined $2 000. On April 1, 1986, the Crown sought leave to appeal the sentence. In addition, the defence sought leave to appeal the conviction as well as an extension of the time allowed for making the appeal. The Québec Court of Appeal rejected the defence motions on May 16, 1986, and the Crown motion on July 2, 1986.

(9) *Lori-Ann Mfg. Inc. — Women's Wear*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer that a manufacturer had refused to supply him because of his low pricing policy. During the inquiry the records of the company were examined.

On September 23, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Montréal on June 20, 1984 against Compagnie Manufacturière Lori-Ann Inc. and its agent, Les Entreprises DDN Inc. The trial was held at Montréal on December 17, 1984, and on June 14, 1985, both accused were convicted. On February 7, 1986, Les Entreprises DDN Inc. was fined $1 000. Compagnie Manufacturière Lori-Ann Inc. appealed the conviction, but subsequently abandoned the appeal. On September 24, 1986, Compagnie Manufacturière Lori-Ann Inc. was fined $7 500.

(10) *Rossignol Skis*

This inquiry commenced in April 1982 following receipt of complaints from retailers that Skis Rossignol Canada Limitée had refused to supply them with skis because of their low pricing policy. During the inquiry the records of the company were examined.

On June 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal on August 1, 1984 against a federally incorporated company that had done business under the names Raymond Lanctôt Ltée and Société de Distribution Rossignol du Canada Ltée.

On January 11, 1985, the Federal Court heard a challenge to the search of the company based on the fact that the search under section 10 of the Combines Investigation Act was conducted after the Charter of Rights and Freedoms came into force and was therefore illegal pursuant to the *Southam* decision. On February 22, 1985, the Court ruled the search invalid but allowed the Attorney General to retain possession of certain documents required for the prosecution of this case. This decision is under appeal, and the preliminary inquiry, which was scheduled for May 1985, has been postponed pending the resolution of the appeal.

(11) *Calvin Klein Jeans*

This inquiry commenced in November 1983 following receipt of complaints from two separate retailers alleging violations of section 38 by Blue Bell Canada Inc. During the inquiry company records were seized from the premises of Blue Bell in Toronto and its Winnipeg sales agent, Michael Gravenor Agency Ltd., pursuant to section 443 of the Criminal Code.

On December 20, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. On March 27, 1985, an Information was laid at Toronto containing one count under each of paragraphs 38(1)(a) and 38(1)(b). Blue Bell Canada Inc. and its vice-president of marketing, Michael Corson, were jointly charged on both counts. In addition, its Sudbury sales agent, Mel Kastner, was jointly charged on the count under paragraph 38(1)(a), and Michael Gravenor Agency Ltd. was jointly charged on the count under paragraph 38(1)(b). Following the preliminary inquiry on October 21, 1985, Michael Corson was discharged on both counts. The remaining accused were ordered to stand trial on both counts.

On May 26, 1986, Blue Bell Canada Inc. pleaded guilty to both counts and was fined $15 000 on the count under paragraph 38(1)(a) and $25 000 on the count under paragraph 38(1)(b). The charges against the sales agents, Mel Kastner and Michael Gravenor Agency Ltd., were withdrawn.

(12) *Lenbrook Industries Ltd. — Stereo Equipment*

This inquiry commenced in October 1982 following receipt of a complaint from a Toronto retailer that Lenbrook Industries Ltd. had attempted to influence upward the price at which he sold stereo equipment. During the inquiry the records of the company were examined.

On December 13, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 38(1)(a) was laid at Toronto on April 26, 1985 against Lenbrook Industries Ltd. On November 25, 1985, following the preliminary inquiry, the accused was ordered to stand trial on both counts.

On January 15, 1987, the company pleaded guilty to one count concerning New Acoustical Dimension stereo products and was fined $25 000. The remaining count was withdrawn.

(13) *Griffith Saddlery & Leather Limited — Equestrian Products*

This inquiry commenced in August 1984 following receipt of complaints from two Ontario retailers alleging that Griffith Saddlery & Leather Limited had refused to supply equestrian products because of their low pricing policies. During the inquiry the records of the distributor were examined.

On February 5, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 38(1)(b) was laid at Stratford, Ontario on June 10, 1985 against Griffith Saddlery & Leather Limited. The company waived the preliminary inquiry. The trial commenced on September 20, 1985 and resumed on April 11, 1986. On August 29, 1986, the accused was acquitted on both counts.

(14) *Zenith Radio Canada — T.V. and Related Products*

This inquiry commenced in January 1982 following receipt of a complaint from a Toronto retailer that he had been refused further supplies of Zenith televisions, stereos and video products because of his low pricing policy. During the inquiry the records of the supplier were examined.

On December 21, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b) was laid on July 4, 1985 at Toronto against Zenith Radio Canada Ltd. On May 26, 1986, the accused pleaded guilty to one count under paragraph 38(1)(a) and was convicted and fined $40 000. The remaining counts were withdrawn.

(15) *Gyrfalcon Corporation — Art Prints*

This inquiry commenced in June 1983 following a complaint from a Toronto retailer that Gyrfalcon Corporation, carrying on business as Nature's Scene, had refused to supply him with limited edition art prints due to his low pricing policy. During the inquiry the records of the supplier were examined pursuant to section 443 of the Criminal Code.

On March 28, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under paragraph 38(1)(a), three counts under paragraph 38(1)(b) and one count under subsection 38(6) of the Act was laid at Brampton, Ontario against Gyrfalcon Corporation on July 23, 1985. At the outset of the preliminary inquiry on February 10, 1986, an additional count was laid against Gyrfalcon Corporation under paragraph 38(1)(a). At the preliminary inquiry on May 13, 1986 the accused was ordered to stand trial on eight counts, while the remaining count was withdrawn. The trial is scheduled to commence on November 16, 1987.

(16) *North Sailing Products Limited — Sailboat Accessories*

This inquiry commenced in November 1984 following receipt of a complaint from a Hamilton retailer alleging that North Sailing Products Limited had refused to supply or otherwise discriminated against him because of his low pricing policy, and had also attempted to influence upward the price at which he sold sailboat accessories. During the inquiry the records of the supplier were examined.

On April 9, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto on July 15, 1985 against North Sailing Products Limited.

The preliminary inquiry was held on December 2, 1985, and the company was ordered to stand trial on both counts. The trial commenced on February 2, 1987, and on February 10, 1987, the accused was convicted on the count under paragraph 38(1)(a) and acquitted on the count under paragraph 38(1)(b). On March 30, 1987, the accused was sentenced to a fine of $2 000.

(17) *Raymond Lanctôt (1982) Limitée — Sunglasses*

This inquiry commenced in June 1984 following receipt of a complaint from a Calgary retailer that it had been refused supply of Vuarnet sunglasses because of its low pricing policy. During the inquiry the records of the distributor were examined.

On August 27, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Montréal against Raymond Lanctôt (1982) Limitée and Diane Lanctôt, an officer of the company. The preliminary inquiry was held on February 13, 1986, and the accused were ordered to stand trial. On February 20, 1986, Raymond Lanctôt (1982) Limited applied to the Québec Superior Court for *certiorari* to overturn the decision made at the preliminary inquiry. The application was heard on April 21, 1986 and was granted on June 6, 1986. The Attorney General filed a notice of appeal on July 4, 1986. The appeal is scheduled to be heard in the Quebec Court of Appeal on April 13, 1987.

(18) *Henry Galler Inc. — Hitachi Products*

This inquiry commenced in May 1985 following receipt of a complaint by a retailer in Kelowna, British Columbia, that Henry Galler Inc. had terminated the retailers franchise for Hitachi electronic products because of his low pricing policy. In June 1985, the records of the supplier were examined under section 443 of the Criminal Code.

On August 2, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On February 25, 1986, an Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal against Henry Galler Inc. The preliminary inquiry began on October 20, 1986 and concluded on November 6. The accused was discharged on the count under paragraph 38(1)(a) and ordered to stand trial on the count under paragraph 38(1)(b). On March 19, 1987, the company pleaded guilty and was fined $15 000. In view of the fact that this was the second conviction of the company (see the 1985 Annual Report, page 34), an Order of Prohibition was requested but refused by the judge.

(19) *Villeroy & Boch Tableware Ltd. — Tableware*

This inquiry commenced in July 1985 following receipt of a complaint from an Edmonton retailer that Villeroy & Boch Tableware Ltd. had refused to supply the retailer with tableware products because of the retailer's low pricing policy.

Searches were conducted in July 1985 in North York, Ontario and North Vancouver, British Columbia pursuant to section 443 of the Criminal Code.

On December 16, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) of the Act was laid at Edmonton on March 18, 1986 against Villeroy & Boch Tableware Ltd. The preliminary inquiry was held on September 24, 1986, and the accused was ordered to stand trial. On March 5, 1987, the accused was acquitted.

(20) *Delco Fireplaces Ltd. — Woodstoves*

This inquiry commenced in October 1985 following receipt of a complaint from a consumer that the wholesaler, Delco Fireplaces Ltd., had refused to supply woodstoves and related products to a retailer because of the latter's low pricing policy. During the inquiry the corporate records of Delco Fireplaces Ltd. were examined pursuant to section 443 of the Criminal Code.

On March 18, 1986, the evidence in the inquiry was referred to the Attorney General of Canada. On May 27, 1986, an Information was laid at Langley, British Columbia containing one count under paragraph 38(1)(b) against Delco Fireplaces Ltd. and Eric Lewtas, the company's president. The preliminary inquiry was held on November 7, 1986, during the course of which the Information was withdrawn.

(21) *Brave Beaver Pressworks Limited — Magazine Advertising*

This inquiry commenced in April 1984 following the receipt of information by the Director which suggested that Brave Beaver Pressworks Limited had a policy of discouraging low price advertisements on current model year motorcycles in the firm's *Cycle Canada* and *Moto Journal* magazines. In November 1984 the records of the company were examined pursuant to section 443 of the Criminal Code.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 24, 1986. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) of the Act was laid at Toronto on July 18, 1986 against Brave Beaver Pressworks Limited. The preliminary inquiry is scheduled to commence on October 18, 1987.

(22) *Pacific Energy Woodstoves Ltd. — Woodstoves*

This inquiry commenced in August 1985 following the receipt of a complaint alleging that Pacific Energy Woodstoves Ltd. had attempted to influence upward the price at which one of its customers sold woodstoves and related accessories. In addition, Pacific Energy Woodstoves Ltd. was alleged to have refused further supplies of woodstoves and related products to the retailer because of the retailer's low pricing policy. During the inquiry the records of Pacific Energy Woodstoves Ltd. were examined pursuant to section 443 of the Criminal Code.

On June 30, 1986, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid on October 8, 1986 at Duncan, British Columbia, against Pacific Energy Woodstoves Ltd. The company president, Mr. Paul Erickson, was jointly charged on both counts. Preliminary defence motions were heard in Duncan, British Columbia on February 25, 1987. A ruling on those motions is expected on April 14, 1987. The preliminary inquiry is scheduled to begin on June 8, 1987.

(23) *Les Must de Cartier Canada, Inc. — Wristwatches*

This inquiry commenced in September 1985 following receipt of a complaint from a Toronto jeweller alleging that Les Must de Cartier Canada, Inc. had attempted to influence upward the price at which the retailer sold Cartier- distributed wristwatches. In addition, Les Must de Cartier Canada, Inc. had allegedly refused to supply wristwatches to the retailer because of the retailer's low pricing policy. During the inquiry the records of the supplier were examined.

On June 30, 1986, the evidence in the inquiry was referred to the Attorney General of Canada. On January 13, 1987, an Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto against Les Must de Cartier Canada, Inc. At the end of the fiscal year, the date for the preliminary inquiry had not been set.

(24) *Running Gear*

This inquiry commenced in June 1985 following receipt of a complaint from a retailer of running gear to the effect that an importer of the product had stopped supplying him because

of his low pricing policy. During the inquiry the records of the importing company were examined pursuant to section 443 of the Criminal Code. On August 6, 1985 the evidence in the inquiry was referred to the Attorney General of Canada, who concluded on September 11, 1986 that a prosecution was not warranted.

(25) *Floor coverings*

This inquiry commenced in October 1983 following receipt of a complaint alleging resale price maintenance on the part of a supplier of floor coverings. During the course of the inquiry further information and evidence were obtained by the Director pursuant to section 10 of the Combines Investigation Act.

On January 14, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence the Attorney General concluded in May 1986 that the evidence was insufficient to support a prosecution.

(26) *Hair Care Products*

This inquiry commenced in July 1985 following receipt of a complaint from a retailer that a distributor had attempted to limit the reduction of the price at which the retailer advertised a specific line of hair care products and had subsequently refused to supply the retailer with the products because of his low pricing policy. During the inquiry the records of the distributor were examined pursuant to section 443 of the Criminal Code.

On July 9, 1986, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded in August 1986 that a prosecution was not warranted.

3. Applications by the Director to the Competition Tribunal under Part VII

No applications were made under Part VII during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 20(2) of the Act

SECTION 32

(1) *Surgical Tapes*

This inquiry commenced in July 1985 following receipt of an application under section 7 of the Combines Investigation Act from six Canadian residents requesting that an inquiry be commenced into anticompetitive activities with respect to the supply of surgical adhesive tapes and plasters in Canada. The applicants alleged that there was a market sharing agreement between the two major suppliers in Canada and that the agreement was one that unduly limited competition, contrary to section 32 of the Act.

Based on the information gathered during the course of the investigation, the Director concluded that there was insufficient evidence to support the allegation made by the section 7 applicants and, in fact, was of the view that the available information contradicted the existence of a market sharing agreement. Accordingly, the matter was discontinued and reported to the Minister on March 31, 1987.

SECTIONS 32, 32.1 and 55

(2) *Automotive Airbags*

This inquiry commenced in August 1986 following receipt of an application under section 7 of the Act from six Canadian residents alleging that three Canadian automobile manufac-

turers had entered into an agreement to delay the installation of air cushion restraint systems within motor vehicles, contrary to sections 32, 32.1 and 55 of the Act.

Based on the information gathered during the course of his investigation, it was the Director's opinion that the information failed to provide evidence of an agreement between the Canadian automakers or their U.S. parent companies. Rather, the information suggested that the automakers may have had valid reasons to oppose the installation of air cushion restraint systems in automobiles. On this basis, the Director concluded that no offences had occurred under the Act and that further investigation was not warranted. Accordingly, the matter was discontinued and reported to the Minister on March 31, 1987.

SECTION 34

(3) *Beer Marketing — Ontario*

This inquiry commenced in March 1986 following receipt of an application by six residents pursuant to section 7 of the Act. The application alleged that breweries in Ontario had offered licensees pecuniary and non-pecuniary inducements to sell the breweries' products, and that those inducements had been offered on an unequal basis, contrary to paragraph 34(1)(a) of the Act. In the course of the inquiry it was determined that the alleged conduct was subject to valid provincial regulation, and that the regulatory authority had exercised its juridiction in this matter. The Director therefore concluded that the matter did not warrant further inquiry. It was accordingly discontinued and reported to the Minister on November 13, 1986.

5. Other Matters

(1) *Flat Rolled Steel and Related Products*

It has come to the public's attention that there exists an inquiry under section 32 of the Act into the production, manufacture, purchase, sale and supply of flat rolled steel, plate steel bar and structural steel and related products. This inquiry became public as a result of proceedings before the Federal Court with respect to applications by concerned companies and individuals under section 18 of the Federal Court Act for prohibition, *certiorari* and *mandamus* against the Restrictive Trade Practices Commission, the Director and the hearing officer. This action sought to overturn certain decisions or rulings that occurred in conjunction with oral examinations upon oath pursuant to subsection 17(1) of the Combines Investigaton Act. These proceedings are more fully reported in the 1982 Annual Report at page 19 (*Irvine et al. v. RTPC et al.*, [1982] 1 F.C. 72.)

The rulings of the Federal Court were appealed by both the applicants and the respondents to the Federal Court of Appeal which on December 15, 1981 set aside the Trial Division's quashing of certain orders of the hearing officer. The Federal Court of Appeal confirmed the hearing officer's refusal to compel the Director to question a witness, or to compel the witness to testify and be subjected to cross-examination. In addition, the Court of Appeal held that the Director could not be obliged to give the objective cause of the inquiry. On March 15, 1982, the Supreme Court of Canada granted leave to appeal the decision of the Federal Court of Appeal. This case was heard on October 26, 1984, and on March 26, 1987, the Supreme Court rendered its decision.

The Supreme Court ruled that there was no statutory obligation on the Director to disclose the basis on which he sought the order for the examination of witnesses under oath and the production of documents. In addition, the Court found that the witnesses' right to be represented by counsel set out in subsection 20(1) did not include the right to cross-examine witnesses at the inquiry. This was based, after reviewing the doctrine of fairness, on the distinction between investigative proceedings and determinative proceedings. The Court felt that:

> "Fairness is a flexible concept and its content varies depending on the nature of the inquiry and the consequences for the individuals involved".

The Supreme Court also ruled that there was no basis for the operation of a writ of *mandamus* in respect of the hearing officer and consequently the hearing officer could not be obliged to receive the evidence of a particular witness. The Court was of the view that if the Director declined to examine a witness in a particular manner or on a particular subject, he could not be compelled to do so. Additional details concerning the decision may be obtained in Chapter II of this report.

(2) *Municipal Castings*

In March 1984 representatives of the Director searched the premises of a Surrey, B.C. municipal castings supplier and its affiliates pursuant to section 443 of the Criminal Code. This inquiry concerned an alleged violation of the monopoly provision of the Combines Investigation Act.

Prior to completion of the search, the companies petitioned the Supreme Court of British Columbia by way of *certiorari* to quash the search warrants. The Court issued an interim order placing the seized documents in the custody of the issuing Justice of the Peace. In April 1984 the Court allowed the warrants to stand except for certain portions, which it quashed or amended. This judgment was appealed by the Crown and the petitioners.

In February 1985 the Court of Appeal of British Columbia quashed the warrants in their entirety (details of the decision are reported at page 44 of the 1986 Annual Report). The petitioners immediately applied to the Court of Appeal to have their documents returned, while the Crown requested that the documents remain in the custody of the Justice of the Peace until it could obtain a revised warrant to seize whatever documents were covered by it.

In March 1985 the Court of Appeal ordered that the documents be returned to the petitioners unless the Crown obtained new warrants within a specified period, in which case it would be permitted to seize these documents. Prior to being served with a new warrant, the petitioners were granted a stay of proceedings and the Court of Appeal agreed to hear their motion to vary or discharge its order.

In June 1985 the Court of Appeal convened to hear the petitioners' motion, but held that it had no "inherent jurisdiction" under the Criminal Code to vary or discharge such an order.

At a further hearing on May 7, 1986, the Court of Appeal concluded that it had the jurisdiction to amend the order, but nonetheless rejected the petitioners' motion to vary or discharge the March 1985 order and permitted the Crown to obtain a new warrant to seize the documents in the custody of the Justice of the Peace. On May 13, 1986, a new Criminal Code warrant was obtained and the documents were removed from the custody of the Justice of the Peace. Prior to the completion of the search however, the petitioners applied to the Supreme Court of Canada for leave to appeal the May 7, 1986 decision of the Court of Appeal and the documents were subsequently lodged with the Court of Appeal pending a decision on the petitioners' application. On November 6, 1986, the Supreme Court of Canada denied the petitioners leave to appeal.

On the same day, the companies petitioned the Supreme Court of British Columbia by way of *certiorari* to quash the latest search warrant and the Supreme Court of British Columbia issued an interim order directing that the documents remain in the custody of the Court of Appeal until this petition had been heard. In December 1986 the petitioners filed an application in the Supreme Court of British Columbia seeking to cross-examine the Informant on the new warrant which the Court rejected on December 24, 1986. The petitioners' *certiorari* application to quash the warrant is scheduled to be heard in May 1987.

(3) *Asphalt and Asphalt Paving*

This inquiry commenced in October 1984 following receipt of information by the Director that a number of asphalt producers and asphalt paving companies were involved in collusive and exclusionary actions contrary to sections 32.2, 33 and 34. During the inquiry the records of four firms were examined pursuant to section 443 of the Criminal Code. The matter became public when an application to quash the search warrant was presented in the Divisional Court of Ontario. On October 18, 1984, Mr. Justice McRae adjourned the application

for argument in the Divisional Court. It was subsequently agreed that the matter should be heard in the Supreme Court of Ontario. The matter was argued on March 12, 1987 before Mr. Justice Osler, who delivered his judgment on March 18, 1987, dismissing the application.

(4) *Contract Hardware*

It has come to the public's attention that there exists an inquiry into the sale and supply of contract hardware in the Toronto area. This inquiry became public as a result of a challenge by one of the companies under inquiry relating to the validity of the warrant obtained under section 443 of the Criminal Code.

On January 23, 1985, the Supreme Court of Ontario found the warrants invalid and ordered the return of seized documents which had been placed in the custody of the Court.

The decision was appealed to the Ontario Court of Appeal which, on January 25, 1985, stayed the order pending the outcome of the appeal. On December 23, 1985, the Ontario Court of Appeal found the warrant invalid in part but allowed the Crown time to obtain amended warrants before the Court would release the documents. The warrants were amended and on January 6, 1986, the Director obtained possession of the documents placed in the custody of the Court.

(5) *Reinforcing Steel*

It has come to the public's attention that there exists an inquiry into prices offered by a manufacturer of reinforcing steel to competing fabricators in the Québec market. During the inquiry, the corporate records of one company were examined pursuant to section 443 of the Criminal Code.

On November 18, 1985, an application for oral examinations under section 17 of the Combines Investigation Act was approved by the Restrictive Trade Practices Commission, and the matter was scheduled for December 17, 1985. However, on December 16, 1985, a statement of claim was brought before the Federal Court of Canada in Toronto by the company whose conduct was being inquired into, challenging the right to conduct hearings under the Act. Arguments were heard in the Federal Court on January 17 and 30, 1986. Written submissions were subsequently filed on June 25 and July 3, and further oral arguments were heard on March 19, 1987. The Director is still awaiting the decision on this matter.

(6) *Ready Mix Concrete*

It has come to the public's attention that there exists an inquiry into the sale and supply of ready mix concrete under paragraph 34(1)(c) of the Act. This inquiry became public as a result of proceedings in Superior Court, Criminal Division, District of Hull with respect to an application by five firms to quash search warrants obtained under section 443 of the Criminal Code. On July 4, 1984, the Court upheld the validity of these warrants subject to minor modifications. On appeal, the Québec Court of Appeal quashed the warrants on January 26, 1985 on the grounds that they were issued by a Justice of the Peace for the District of Hull while the appellants did not have any premises in that judicial district and that the warrants were executed in the Judicial District of Montréal without being countersigned by a Justice of the Peace for that district. Leave to appeal to the Supreme Court of Canada was refused in December 1985.

A second series of search warrants issued under section 443 of the Criminal Code were obtained on October 23, 1985 in the Judicial District of Montréal. In November 1985 the five cement firms challenged the warrants in the Superior Court, Criminal Division, District of Montréal under the Charter of Rights and Freedom. The decision of the Superior Court is awaited.

(7) *Artificial Christmas Trees*

It has come to the public's attention that there exists an inquiry into the sale and supply of artificial christmas trees in the Province of Québec. This inquiry became public as a result of proceedings before the Superior Court of the Province of Québec concerning the retention

of documents seized. The Court ordered that the documents be brought to the prothonotary to be returned to the firm from which they were seized, but allowed the Director to retain photocopies of the documents. A motion by the Director for suspension of the order was rejected by the Court, and the original documents were returned to the prothonotary at year end.

(8) *Automotive Arbitrage*

It has come to the public's attention that an application under section 7 of the Act has been made by a group of independent automobile dealers who have been unable to purchase vehicles from General Motors dealers and Ford dealers for resale to the United States. The fact of the application was made public by the applicants who alleged that the Canadian automotive manufacturers had taken steps to effectively deter its dealers from selling vehicles to the independent dealers. At the end of the fiscal year the Director's examination of the matter was continuing.

(9) *Architectural Finishes*

It has come to the public's attention that there exists an inquiry into alleged bid-rigging for the supply of architectural finishes in the Province of Newfoundland. This inquiry became public as a result of proceedings initiated by one of the companies under inquiry to have warrants issued under section 13 of the Competition Act quashed.

On March 27, 1987, the Supreme Court of Newfoundland, Trial Division, upheld the validity of the warrants. The Court found that a search warrant is part of an investigative process and, by virtue of that fact, an information to obtain a warrant under section 13 need not contain a precise description of a specified object in a defined place upon the premises to be searched. The Court also found that in judicially considering the sufficiency of an Information judges may draw reasonable inferences from the facts contained therein.

(10) *Vitamins*

It has come to the public's attention that there exists an inquiry into the sale and supply of vitamins. This inquiry became public as a result of a challenge by Hoffman-LaRoche Limited, of search warrants obtained under section 13 of the Competition Act.

The scope of the search and seizure being made pursuant to the original search warrant issued by the Honourable Mr. Justice Catzman was challenged by Hoffmann-LaRoche in its motions before the Honourable Madame Justice McKinlay on January 4, 1987. These motions were dismissed as the result of an undertaking entered into between counsel regarding the manner in which disputed documents would be handled.

Two days following, a second search warrant was issued by the Honourable Mr. Justice Montgomery. This warrant was obtained without reference to the existing undertaking. On this basis the Honourable Madame Justice McKinlay, on January 19, 1987, issued an order setting aside the second warrant.

On January 29, 1987, Justice McKinlay heard a motion by the Crown asking that her order be set aside and made the following findings:

(1) On whether or not she had the jurisdiction to issue the order, reference was made to *Wilson v. the Queen* (1983) 2 S.C.R. 594 and it was noted that in this case Mr. Justice Montgomery had not been available to hear the motion.

(2) The order would stand as the omission of the facts surrounding the undertaking made on January 14, 1987, were facts that were otherwise relevant to the exercise of the judge's discretion in issuing a warrant pursuant to section 13.

On February 12, 1987, a subsequent search warrant mentioning the omitted details was issued by the Honourable Mr. Justice McKeown. Hoffmann-LaRoche subsequently appealed that decision. On March 30 and 31, 1987, the Ontario Court of Appeal heard a motion by the Director to quash the appeal by Hoffman-LaRoche regarding the issuance of the February 12, 1987 warrant. The Court reserved its decision on the motion.

CHAPTER IV

Resources Branch

1. Activities

The Resources Branch is responsible for the conduct of all inquiries under the Act with respect to the activities of firms in the Canadian resource industries. In this context resource industries are considered to include agriculture; fishing and all food processing; trapping and all fur processing; the forest industry, including all stages of manufacture and distribution of wood and wood products, including pulp and paper; the production, mining and primary processing of all minerals; and the production and distribution of energy, including electrical power, coal and petroleum products.

The Branch analyzes complaints and evidence from various sources pertaining to allegedly anticompetitive situations in resource sectors and, when warranted, conducts an inquiry. Any apparent restriction of competition is examined in order to determine whether there is reason to believe that a violation of Part V of the Act has occurred or that grounds exist for the making of an order by the Tribunal under Part VII of the Act.

The Branch is responsible for assessing the competitive implications of specific regulatory activities as they pertain to the resource industries. In this context, pursuant to sections 97 and 98 of the Act, the Branch assists the Director with his representations before regulatory boards in respect of the maintenance of competition in connection with matters being heard by such boards.

The Branch is also concerned with inquiries relating to the patent and trade mark provisions of section 29 of the Act in relation to the resource industries. As well, it maintains a general surveillance of competitive activities and competition policy issues in those industries for which it is responsible so as to identify problem areas requiring analysis or investigation. Further, the Resources Branch participates in interdepartmental committees and provides input into, and analysis of, competition issues arising from acquisitions under review by Investment Canada.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 21(1) of the Act

SECTION 32

(1) *Hogs — Alberta*

This inquiry commenced in February 1980 following receipt of information alleging that the major meat packers operating in Alberta had agreed to share slaughter hogs offered for sale by the Alberta Pork Producers Marketing Board on a predetermined percentage basis and to purchase slaughter hogs at an agreed price or within a given price range. It was also alleged that they agreed on prices at which pork or pork products were to be sold to the distributive market.

Documents on the premises of the Alberta Pork Producers Marketing Board were examined pursuant to section 10 of the Combines Investigation Act in February 1980. Oral examinations pursuant to section 17 of that Act were held during 1980 and 1981 in Calgary, Edmonton, Ottawa and Toronto.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on December 21, 1981. On February 19, 1982, an Information containing two counts under paragraph 32(1)(c) of the Act was laid at Calgary against Burns Foods Limited, Canada Packers Inc., Intercontinental Packers Limited, Red Deer Packers Ltd. and Swift Canadian Co. Ltd.

A revised Information (adding Gainers Limited, changing the name of another accused and deleting a third), was laid on June 24, 1982 against Burns Food Limited, Canada Packers Inc. (formerly Canada Packers Ltd.), Eschem Canada Inc. (formerly Swift Canadian Co. Ltd.), Gainers Limited and Intercontinental Packers Limited.

The preliminary inquiry commenced on January 31, 1983. On December 9, 1983, in the Provincial Court of Alberta at Calgary, three of the accused — Burns, Eschem and Gainers — waived the preliminary inquiry and pleaded guilty to a charge of conspiracy to prevent or lessen unduly competition in the purchase of slaughter hogs in the Province of Alberta for the period from December 9, 1969 to December 31, 1974. The three accused companies were each fined $125 000.

The two remaining accused, Canada Packers and Intercontinental, continued with the preliminary inquiry. The presiding judge gave his ruling on May 24, 1984. The judge ordered the two accused to stand trial in respect of a conspiracy to prevent or lessen competition unduly in relation to prices of pork and pork products sold to the distributive market, contrary to paragraph 32(1)(c) of the Act, for the period January 1, 1965 to June 30, 1976 instead of January 1, 1965 to December 31, 1978, as originally alleged by the Crown. In addition, he ruled that the evidence was not sufficient to allow a charge relating to the marketing of slaughter hogs.

The Crown, as a result of the ruling not to include the marketing of slaughter hogs in an indictment, decided to proceed by way of preferred indictment. The Attorney General of Canada, on July 18, 1984, laid charges in the Court of Queen's Bench of Alberta alleging that Canada Packers Inc. and Intercontinental Packers Limited conspired to prevent or lessen unduly competition in the marketing of slaughter hogs and pork cuts or products therefrom, contrary to paragraph 32(1)(c) of the Act.

In July 1985 Canada Packers Inc. filed a statement of claim against the Attorney General of Canada requesting that (a) portions of the indictment relating to the purchase of slaughter hogs through the Alberta Pork Producers Marketing Board be declared invalid and of no force or effect; (b) provisions of the Criminal Code allowing the Attorney General of Canada to prefer an indictment after an accused has been discharged following a preliminary inquiry be declared inconsistent with the Charter of Rights and Freedoms; and (c) an injunction be granted restraining the Attorney General of Canada from prosecuting Canada Packers on parts of the indictment relating to the purchasing of slaughter hogs through the Alberta Pork Producers Marketing Board.

In September 1985 the Court rejected Canada Packers' statement of claim. An appeal of this decision by Canada Packers was dismissed.

The trial in this matter commenced on January 6, 1986 in the Court of Queen's Bench in Calgary. On June 26, 1986, Intercontinental Packers Limited entered a guilty plea to a charge of conspiracy to prevent or lessen unduly competition in the purchase of slaughter hogs in the Province of Alberta for the period from January 1, 1969 to December 31, 1974. The Attorney General of Canada entered a stay of proceedings against Intercontinental in relation to the parts of the charges dealing with the marketing of pork cuts or pork products therefrom. Sentencing has been adjourned to the end of the trial.

It is expected that final argument in this case will be presented in June 1987.

(2) *Gaspé Cure — Québec*

This inquiry commenced in January 1985 following the receipt of a complaint from a Canadian exporter who was refused supply of "Gaspé Cure" (a lightly salted fish, Gaspé style) by Exportation Gaspé Cured Inc., an export consortium formed by all producers of Gaspé Cure.

The evidence obtained during the course of the inquiry was referred to the Attorney General of Canada on August 26, 1985. On November 18, 1985, an Information containing one count under subsection 32(1) was laid at Percé, Québec against the consortium, Exportation

Gaspé Cured Inc., and the following members of the consortium and individuals, alleging that they had prevented or lessened competition unduly in the sale of Gaspé Cure:

Pêcheries Tourelles Inc.
Lelièvre, Lelièvre et Lemoignan Ltée
Poissonnerie Cloridorme Inc.
Poisson Salé Gaspésien Ltée
Pêcheries Sheehan Inc.
Poissonnerie Anse-à-Beaufils Inc.
Pêcheries Malbaie Inc.
Pêcheries de l'Anse-au-Griffon Inc.
Manigo Inc.
Pêcheries Cartier Inc.
Poissonnerie Boulay Inc.
Pêcheries Gaspésiennes Inc.
Coopérative de transformation de produits marins (Newport)
Raymond Sheehan
Gaston l'Anglais
Mark Bunton

The accused waived preliminary inquiry and the trial has been set for October 1987 before the Superior Court of Québec in Percé.

SECTION 38

(3) *Dairy Equipment — Winnipeg*

This inquiry commenced in October 1982 following receipt of a complaint from an independent operator of a refrigeration equipment repair shop in Winnipeg, Manitoba, alleging that Dairy Supplies, Limited, the exclusive distributor of machines and parts manufactured by Taylor Freezer, discriminated in the sale and supply of parts required to service the Taylor line of equipment, contrary to paragraph 38(1)(b) of the Act.

Documents on the premises of Dairy Supplies, Limited were seized on January 20, 1983. Oral examinations pursuant to section 17 of the Combines Investigation Act were held on January 9 and 10, 1984 in Winnipeg.

On December 3, 1984, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On February 13, 1985, an Information containing one count under paragraph 38(1)(b) of the Act was laid at Winnipeg against Dairy Supplies, Limited. At the preliminary inquiry on November 7, 1985, the accused was ordered to stand trial. The trial was held on June 3, 1986.

During the course of the trial the judge excluded documents seized pursuant to an order under section 10 of the Combines Investigation Act on the basis that the documents were seized in violation of section 24(2) of the Charter. In so doing, the judge relied on the decision of the Supreme Court of Canada in *R. v. Therens* (1985) 18 C.C.C. (3d) 481 (S.C.C.). After hearing the evidence presented to him, the trial judge acquitted the accused.

The Attorney General appealed this decision to the Court of Appeal of Manitoba. The appeal was heard on December 16, 1986 and judgment was delivered on January 13, 1987. The principal issue involved in the appeal was the question of the admissibility of evidence which was seized as a result of an unconstitutional and illegal search.

The Court of Appeal ruled that the trial judge erred in holding that every violation of the Charter leads to exclusion of evidence, and that there was a distinction that can be made between the type of evidence that was dealt with in *Therens* and the type of evidence in the case before the court. The Court of Appeal was of the view that a narrow interpretation should be given to the *Therens* case and applied the case of *R. v. Pohoretsky* (1985), 18 C.C.C. (3d) 104 wherein it was held that a number of factors should be considered in deciding the issue of the admissibility of evidence.

The Court of Appeal allowed the appeal and ordered a new trial. The defendant has filed an appeal to the Supreme Court of Canada.

(4) *Gasoline — Meadow Lake, Saskatchewan*

This inquiry commenced in April 1984 following receipt of a complaint concerning a gasoline price war among service station operators. It was alleged the price war was designed to discipline an independent operator because of his low pricing policy. During the inquiry interviews with service station operators and independent witnesses in Meadow Lake were conducted.

In March 1985 the evidence obtained in the inquiry was referred to the Attorney General of Canada. On July 4, 1985, an Information alleging violations of paragraph 38(1)(a) and subsection 38(6) of the Act was laid at Meadow Lake. Kenneth Laird and Sundance Service Ltd. were charged with two counts under paragraph 38(1)(a). Brad Stevenot, Triple "A" Enterprises Ltd., Patrick Lutz and P & F Holdings Ltd. were each charged with one count under paragraph 38(1)(a). Kenneth Laird, Sundance Service Ltd., James Kerr and the Meadow Lake Consumers Co-operative Association were each charged with one count under subsection 38(6). The preliminary inquiry was held at Meadow Lake on September 16, 1985. Patrick Lutz and P & F Holdings were discharged on the count under paragraph 38(1)(a), and Kenneth Laird and Sundance Service were discharged on the count under subsection 38(6). The accused were ordered to stand trial on the remaining counts.

The matter went before the Court of Queen's Bench in North Battleford on December 16, 1986. The defendants requested an order staying the charges on the grounds that their right to be tried within a reasonable time, as guaranteed by section 11(b) of the Charter of Rights, had been violated. After reviewing the case and considering the jurisprudence established by the Saskatchewan Court of Appeal and the Supreme Court of Canada, the judge concluded that the defendants' rights had been violated and directed a stay of proceedings.

(5) *Sunoco Inc. — Gasoline*

This inquiry commenced in March 1985 following receipt of a complaint from a Sunoco dealer in Markham, Ontario that Sunoco was engaged in a policy of price maintenance.

Documents on the premises of Sunoco Inc. in Toronto were seized on March 15, 1985, pursuant to section 443 of the Criminal Code. On May 15, 1985, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On May 24, 1985, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the Act was laid at Toronto against Sunoco Inc.

The preliminary inquiry was held at Toronto on September 5 and 6, 1985, and Sunoco Inc. was ordered to stand trial on both counts. On June 24, 1986, the company was convicted of the charge under paragraph 38(1)(a) and fined $200 000. The accused was acquitted on the remaining charge. At year-end, Sunoco had appealed the conviction and sentence, and the Crown had appealed the acquittal.

(6) *Bread — Cornwall*

This inquiry commenced on January 9, 1984 following receipt of information from a Cornwall grocer alleging that George Lanthier & Fils Limitée was enforcing its resale prices on a line of bread and threatening to withhold supply if the complainant did not comply.

Hearings under section 17 of the Combines Investigation Act were conducted in Ottawa on May 13, 1985. The evidence obtained in the inquiry was referred to the Attorney General of Canada on September 26, 1985. On November 21, 1985, an Information containing one count under paragraph 38(1)(a) against George Lanthier & Fils Limitée was laid at Cornwall, Ontario. The preliminary inquiry scheduled for May 11, 1986 was waived by the accused.

The trial was held on September 22 and 23, 1986 in the District Court, Cornwall, Ontario. George Lanthier and Fils Limitée were convicted of one count under section 38(1)(a) of the Act and fined $2 000.

On November 19, 1986 leave to appeal was granted. It is expected that the appeal will be heard late in 1987.

3. Applications by the Director to the Competition Tribunal under Part VII

SECTION 64

(1) *Palm Dairies Limited — Milk and Dairy Products*

This inquiry commenced in July 1986 following the receipt of two applications by six residents under section 7 of the Act in respect of the proposed acquisition of Palm Dairies Limited by four dairy cooperatives: the Fraser Valley Milk Producers Cooperative, the Northern Alberta Dairy Pool, the Central Alberta Dairy Pool and the Dairy Producers Co-operative Limited. This matter had previously been brought to the Director's attention when a public announcement was made in June 1986 that the cooperatives, through a numbered Alberta company, had outbid five other firms to acquire Palm from its parent company, Union Enterprises Limited.

During the inquiry information was obtained by the Director from the cooperatives, competitors and retailers as well as section 7 applicants. The information gave the Director grounds for making an application to the Tribunal under section 64, in the belief that the proposed transaction was likely to prevent or lessen competition substantially in the sale and supply of milk and other dairy products in British Columbia, Saskatchewan and Alberta.

From the outset, counsel for the cooperatives argued that the acquisition was substantially completed on June 17, 1986 and therefore by virtue of section 66 the new Act did not apply to the proposed transaction. This was the date the agreement of purchase and sale was signed and was also two days before the Competition Act was proclaimed. The Director's position was that, since the agreement of purchase and sale had not been completed, the transaction was not substantially completed, and, therefore, the new Act applied.

In view of the transitional nature of the case and the uncertainty as to how the issue of "substantial completion" would be resolved, the Director agreed to enter into settlement discussions with the parties. The settlement was considered to be the most appropriate way of achieving the goal of retaining Palm as an independent competitor in the market. It was conditional upon approval by the Competition Tribunal, particularly as the terms of the settlement involved obligations extending beyond the Director's three year limitation provision for commencing proceedings under the Act, and to ensure that the terms were enforceable by the Tribunal by way of an order.

The negotiations concluded in an application to the Tribunal for a consent order under clause 64(f)(iii)(B) and/or section 77 of the Act. The proposed consent order provided for a limited acquisition of 50 percent of Palm's shares by the four cooperatives with the remaining 50 percent of the shares to be purchased by the management of the company. The management would also have been assured a tie-breaking vote on the Board of Directors and control of the day-to-day operations of the company. As well, there were restrictions on the transfer of confidential corporate and marketing information. These terms, plus other restrictions on the conduct of the shareholders, were designed to ensure that adequate safeguards were in place to maintain Palm as an independent and viable competitor to the cooperatives.

After two hearings relating to the application for the consent order, on November 27, 1986, the Tribunal denied the Director's application, raising a number of concerns about the perpetual mandatory nature of the order sought, its vagueness and its comparative overall effectiveness.

On December 5, 1986, the Director filed an appeal of the Tribunal's decision, which was subsequently abandoned. The Director concluded that given the unique nature of the Palm case in terms of the transitional question of jurisdiction, it would not be appropriate to pursue issues relating to the interpretation of the new consent order provisions as they applied to this

unique instance. The Director returned to his original position of challenging the proposed merger and the parties abandoned the transaction.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 20(2) of the Act

SECTION 32

(1) *British Columbia Construction Trades*

This inquiry was commenced in March 1983 upon receipt of an application, pursuant to section 7 of the Act, for an inquiry into the exercise of "non-affiliation" and "unfair goods" clauses in collective agreements in the British Columbia construction industry. It was alleged that the exercise of these clauses by construction trade unions violated section 32 of the Act.

The "non-affiliation" clauses that were the subject of the complaint provide that members of a construction trade union, which is a party to the collective agreement, may refuse to work with non-union workers or with workers whose union is not affiliated with the B.C. and Yukon Building Trades Council. The applicants alleged that the construction unions had applied an overly-broad interpretation of these clauses, especially with respect to major projects, with the result that the number of available sub-contractors was reduced, and as a consequence competition among sub-contractors was lessened and costs increased. Also, in some instances, workers claimed the right, under "non-affiliation" and "unfair goods" clauses, to refuse to handle goods made off the site by non-union workers. The complainants alleged that this refusal unduly lessened competition in the supply of goods to construction projects.

An important question raised by the application was whether the conduct complained of is exempted from the provisions of the Act by section 4. Section 4 provides that the Act does not apply to "combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees". In light of the questions raised the Director sought an opinion from the Department of Justice.

With respect to "non-affiliation" clauses, it was concluded that the courts would hold that they come within paragraph 4(1)(a) as being "activities of workmen or employees for their own reasonable protection as such workmen or employees". The situation is less clear regarding "unfair goods". However, the inquiry failed to disclose any evidence that the application of "Unfair goods" clauses has lessened, unduly, competition in the production, sale or supply of any product.

In 1984 the Legislature of British Columbia passed certain amendments to the Labour Code with respect to construction work associated with economic development projects. These amendments provide means by which the problems complained of may be resolved and those means have been employed in a number of instances.

On the basis of these considerations, the Director concluded that the matter did not warrant further inquiry. The matter was therefore discontinued and reported to the Minister on March 9, 1987.

(2) *Refineries — Montréal*

This inquiry commenced in January 1986 following receipt of an application from six Canadian residents pursuant to section 7. The application centred on the circumstances surrounding the purchase by Ultramar Canada Inc. in December 1985 of the former Gulf Canada refinery located in Montréal and on the subsequent closure of the refinery.

Before receiving the section 7 application, the Director had undertaken a detailed examination of the circumstances surrounding this transaction. Upon receipt of the application, further enquiries were made with regard to the specific allegations raised in the application.

In support of their allegations, the applicants referred to a number of statements and events that were contained in media reports which they believed indicated conduct on the part of firms named in the application that was contrary to the Act. On investigation it was found that the reports were inaccurate in a number of important respects.

On January 13, 1986, the Minister of Consumer and Corporate Affairs requested the Restrictive Trade Practices Commission to consider, in its report on the petroleum industry, the balance of supply and demand in the market for gasoline and other refined petroleum products which confronted Québec-based refineries. In its report, (referred to in greater detail at p. 50) the Commission concluded, among other things, that the relatively large decline in petroleum product demand in Québec in the early 1980's made the closure of Montréal refineries that occurred in 1983 a virtual necessity. The Commission also concluded that although the closure of the Gulf refinery did not give rise to security of supply concerns, by reducing surplus capacity the closure no doubt diminished competitive pressures. In addition, by approving Ultramar's acquisition of the Gulf assets, the Government of Canada determined that on balance those transactions were in the overall public interest.

In light of these factors, the Director concluded that the evidence obtained during his inquiry did not disclose an offence under the Act and that the circumstances did not warrant further inquiry on his part. Accordingly, the inquiry was discontinued and reported to the Minister on March 31, 1987.

SECTION 64

(3) *Sugar*

This inquiry was commenced in March 1986 following receipt of information that a sugar refiner in Eastern Canada proposed to acquire another refiner. As the purchase and sale were not substantially completed at the time of the coming into force of the Competition Act, the transaction was examined under the new merger provisions.

During the course of the inquiry, information was obtained from various sources. In addition, extensive interviews were conducted with grocery chains and industrial buyers of sugar in Québec and Ontario, as well as with other persons knowledgeable about the industry.

Information obtained revealed that imported sugar had a strong competitive impact on pricing and service in the eastern Canadian refined sugar market and that the other existing cane sugar refiner was an aggressive and competitive force. As a result, the Director concluded that while the acquisition would increase concentration in the refined sugar market in eastern Canada, he did not have grounds to make an application to the Competition Tribunal under section 64 of the Act. Accordingly, the matter was discontinued and reported to the Minister on August 15, 1986.

(4) *Acquisition of the Confectionery Operations of Cadbury Schweppes Canada Inc. by William Neilson Ltd.*

This inquiry commenced in February 1987 following receipt of an application by six residents under section 7 of the statute.

This matter had previously been brought to the Director's attention on January 13, 1987 when William Neilson Ltd., a Canadian owned confectionery manufacturer, announced the execution of an agreement to purchase the confectionery operations of Cadbury Schweppes Canada Inc., which would include a long term licence of the Cadbury trademarks. The parties publicly announced that the agreement, which contemplated a closing date of February 12, 1987, was to be subject to review by the Director under the merger provisions of the Competition Act.

During the course of the inquiry Neilson and Cadbury provided a large volume of information and studies relating to the factors referred to in sections 64, 65 and 68 of the Act. The Director also obtained a considerable volume of information from major customers, suppliers, competitors and other persons with knowledge of the confectionery industry. In addition, given that Neilson had announced that it planned to close Cadbury's plant in Whitby, Ontario

within a year of the transaction being completed, information was obtained from union officials regarding the impact of the proposed merger. The information from all sources was assessed by members of the Director's staff, two expert economists and senior legal counsel.

The Director determined that while the transaction would increase Neilson's market share, vigorous and effective competition would remain in the market. In addition, it was established that entry into the industry by aggressive competitors was taking place and that there were no significant barriers to import competition. The merger was expected to result in substantial efficiency gains which would afford Neilson the opportunity to more effectively and vigorously compete with the remaining domestic manufacturers, as well as product sourced from offshore.

On the basis of all the information, the parties to the proposed merger were advised on February 23, 1987 that the Director had concluded that Neilson's acquisition of Cadbury was not likely to lessen competition substantially and that he did not have grounds to make an application to the Competition Tribunal. As a result, on the same day the inquiry was discontinued and reported to the Minister and the applicants.

5. Director's Representations to Regulatory Boards

(1) *National Energy Board Hearing — TransCanada Pipelines Limited*

At page 50 of the 1986 Annual Report, it was reported that the National Energy Board (NEB) was holding proceedings upon direction of the Intergovernmental Agreement on Natural Gas Markets and Prices of October 31, 1985 to decide some outstanding issues related to the development of a competitive market in natural gas.

In May 1986 the NEB in its Reasons for Decision eliminated a tariff provision that prevented independent shippers from displacing sales of natural gas in the traditional eastern markets of TransCanada PipeLines Limited. In intervening the Director had argued that the operation of the tariff provision prevented the competitive marketing of natural gas.

The NEB also amended current tariff provisions to prevent the incidence of a disproportionate recovery of transportation costs from independent buyers who would disrupt the traditional sales patterns between TransCanada and its provincial distributors. Again the Director had urged that failure to amend the tariff would place extra costs on these buyers and would impede the development of independent sales that competed in TransCanada's traditional market and so hinder the development of a competitive market for gas.

The NEB recommended that the carrying costs on the refinancing of the $2.7 billion in debt (the TOPGAS agreements) incurred by TransCanada by way of prepayment for gas supplies under its purchase contracts be borne in less than a proportional basis by any new sales that supplanted sales that TransCanada currently had under contracts with its distributor customers. The NEB further recommended that these carrying charges should not be part of TransCanada's tolls, but should be imposed by the Alberta Government. The Director in opposing the imposition of these costs on TransCanada's competitors as an access provision for the pipeline, urged the Board to consider the effect of such sharing on the development of a competitive market. The Director maintained that such sharing was not necessary to allow TransCanada's producers to compete, and, in fact, the imposition of these charges on independent sales would inhibit the introduction of competitive gas supplies and thereby significantly reduce the benefits intended to flow from natural gas deregulation. The decision by the Board meant that these costs would not be fully shared, and only part, or less than a proportionate share, should be paid by new sales.

At the same time the Director made a submission to the Pipeline Review Panel, established under the October 31, 1985 Agreement to examine the long-term operation of interprovincial and international pipelines in the buying, selling and marketing of natural gas. The Director advocated common carriage status for TransCanada and the separation of the pipeline's transportation function from its function as a marketer. The Director further proposed

that consideration be given to a phase-down in TransCanada's contracts with its distributors to allow the distributors access to competing gas supplies and thus give the distributors bargaining power in negotiating market prices under these long-term contracts. (These negotiations were completed on or about November 1, 1986, the date set by the October 31, 1985 Agreement for full deregulation.) In June 1986 the Panel issued its report and endorsed contract renegotiation but supported the principle of sanctity of contract thereby precluding any mandatory write-down of the distributors' contracts with TransCanada. The report supported the principle that the marketing function of the pipeline be separated from its provision of transmission services and recommended non-discriminatory access to pipeline systems and gas markets. It also endorsed the NEB's recommendations on the sharing of TOPGAS carrying charges.

(2) *Ontario Energy Board Hearing — Contract Carriage*

In September 1986 the Director intervened before the Ontario Energy Board in a hearing convened to decide on the method and extent of instituting changes in the Ontario natural gas distribution system to accommodate the deregulation of gas pursuant to the October 31, 1985 Agreement on Natural Gas Markets and Prices between the Federal Government and the producing provinces. The hearing examined the extent and principles of toll setting for long-term contract carriage for competing shippers selling into TransCanada's traditional Ontario market. It further examined whether the distributors' marketing activities should be separated from their activities of providing transportation services and whether and to what extent brokers and marketers should be allowed to operate in Ontario and obtain access to the distributors' transportation systems.

The Director argued that brokers and groups of end-users should have access to the distribution systems to ensure the most effective and efficient means of bringing buyers and sellers of gas together in order to create a competitive market in natural gas. The Director recommended that, where a distributor competes in the sale of gas, he should do so by means of separate corporate affiliates which would be unregulated and which would contract for transportation service with the regulated distributor. If a distributor continued to sell gas in conjunction with the provision of distribution and transportation services, such sales should continue to require regulatory oversight to ensure that its monopoly position in transportation services does not subsidize its sales in the market for natural gas or that it does not otherwise show preference to its own sales activities.

The OEB decision was still pending on March 31, 1987.

(3) *Manitoba Public Utility Board Hearing — Cost Pass Through*

In February 1987 the Director intervened before the Manitoba Public Utilities Board (PUB) in a hearing convened to decide whether to pass through to end-users of natural gas the prices negotiated between the Manitoba distributors and TransCanada Pipelines Limited pursuant to deregulation as announced in the Agreement on Natural Gas Markets and Prices on October 31, 1985. The Manitoba government also requested the PUB to inquire whether these prices exceed the competitive market price for gas and whether the current regulatory, contractual, administrative and institutional arrangements for the supply of gas ensure that in the future gas will be provided to Manitoba consumers at competitive prices. Final argument was scheduled for April 1987.

(4) *Tariff Board — Sweetener Policy*

In July 1986, following a reference from the Minister of State for Finance pursuant to section 4(2) of the Tariff Board Act, the Tariff Board initiated an inquiry into the current state and future economic prospects of the Canadian natural sweetener industry, including sugar beets and high fructose corn syrup (HFCS). As part of the terms of reference of the inquiry, the Board was instructed to examine the scope for possible government action to assist this industry.

The Board held a public hearing in this matter in December 1986. The Director made a written submission pursuant to section 97 of the Competition Act and was also represented at

the hearing. In his submission the Director concluded, based on an analysis of available data, that market forces should be allowed, as much as possible, to play their traditional role in determining the supply of sweeteners to the Canadian market. He noted that the least appropriate course of action would be the imposition of any form of tariff, duty or surtax on raw and/or refined sugar. In the Director's view, the costs to the Canadian economy of this option would be significant, far outweighing any benefits derived by sugar beet growers. He recommended that support given to sugar beet growers be in the form of direct subsidies, but only if it is established that the sugar beet industry is viable in the long run and support is only necessary from time to time. The Director also recommended that, in the event that the industry is found to be uneconomic, consideration be given to the payment of transitional grants to growers to assist them to shift to other crops.

The Board is expected to present its report to the Minister of State for Finance in late May 1987.

(5) *National Farm Products Marketing Council — In the Matter of an Inquiry into the Merits of Establishing a National Agency for Potatoes*

On February 27, 1987, pursuant to the Notice of Public Hearing in the above matter and pursuant to section 97 of the Competition Act, the Director presented a written submission to the National Farm Products Marketing Council pertaining to its inquiry into the merits of establishing a national marketing agency for potatoes. The proposal under consideration, as advanced by potato growers and provincial agricultural marketing agencies, would provide for a national agency with supply management powers to determine potato prices on a cost-of-production basis, set quotas on potato marketing, regulate interprovincial and export trade and impose import controls on potatoes and potato products.

Following an analysis of the nature and properties of potatoes and production and trade data on potatoes, the Director concluded in his written submission that a National Potato Agency with supply management powers should be opposed on the following grounds:

(a) it would be very difficult to administer because of the heterogeneous nature of potatoes, the high variability in potato yields and the ease of entry into potato production on a small scale, and

(b) it would have negative implications for prices, productivity, efficiency and equity in the potato industry.

Based on his assessment of potato production and marketing opportunities and constraints, the Director recommended consideration be given to a potato marketing scheme, without supply management powers, whose purpose would be market development and improvement of the operational and pricing efficiency of the marketing system.

On March 25, 1987, the Council held a pre-hearing conference to discuss issues and procedures preparatory to conducting a series of public hearings across Canada commencing April 28, 1987. The Director has retained counsel and expert witnesses to present his position during these hearings.

6. Other Matters

(1) *Petroleum Industry — Section 47 of the Combines Investigation Act*

On May 16, 1986, the Restrictive Trade Practices Commission transmitted its Report entitled *Competition in the Canadian Petroleum Industry* to the then Minister of Consumer and Corporate Affairs, the Honourable Michel Côté. Pursuant to section 19 of the Combines Investigation Act, the Minister tabled the Report in the House of Commons on June 13, 1986.

The Report, which comprised 800 pages in three volumes, followed a lengthy public inquiry by the Commission into the state of competition in the Canadian petroleum industry. This inquiry is referred to in previous annual reports.

The Commission's inquiry and Report focussed on industry structure, firm conduct and the regulatory environment in all sectors of the Canadian petroleum industry from the 1950's to the present. The Commission examined two distinct subjects. First, it examined allegations by the Director that consumers were overcharged $12 billion in the 1958-1973 period as a result of anticompetitive behaviour by the oil companies. Second, it examined the workings of current petroleum markets in Canada to determine whether there are monopolistic or restrictive practices that are contrary to the public interest and if so, whether remedies are available to eliminate or reduce their effects in the marketplace.

In regard to the alleged $12 billion overcharge, the Chairman stated "there was no proof placed before the Commission that Canadian petroleum companies overcharged consumers by 12 billion dollars or that, indeed any measurable excess costs were passed on in any significant degree between 1958 and 1973". Commissioner Roseman concluded in a separate opinion that there was an excess cost in regard to imported crude oil, that there was no way of responsibly calculating the excess and that there was virtually no evidence of a pass-on to consumers.

Insofar as its examination of monopolistic or restrictive practices was concerned, the Commission made the following twelve recommendations relating primarily to the refining and marketing sectors of the industry.

(a) To deal with several practices in the petroleum industry and those that may from time to time arise in other industries, a section should be added to Bill C-91 (The Competition Act) that would allow the Competition Tribunal to issue orders requiring the discontinuance or non-repetition of any conduct that would substantially lessen competition;

(b) Suppliers who hold high degrees of market power should not be entitled to refuse supply to others except to the extent that they can establish sufficient reason for refusing supply;

(c) The jurisdiction of the Competition Tribunal to grant interim orders, particularly with respect to matters affecting supply, should be conferred by legislation;

(d) Any person who has been refused supply should be entitled to apply directly to the Competition Tribunal for relief;

(e) The Government should be empowered to exempt particular mergers, including acquisitions by Crown corporations or mergers that have been approved by Investment Canada, from review by the proposed Competition Tribunal;

(f) Refiners should not impose non-petroleum use covenants on land they sell, and should declare publicly that they will not enforce the covenants they hold on properties they have already sold;

(g) Suppliers and the Director should apply certain guidelines outlined by the Commission in determining the limits of appropriate pricing in the dual distribution context of the petroleum industry;

(h) Refiners who have stated that they will not grant unpublished discounts off published prices should abandon this aspect of their "rack pricing" policies;

(j) With respect to Petro-Canada,

  (i) The recommendations of the Minister of Consumer and Corporate Affairs should be required as a precondition for the approval of Petro-Canada's capital budgets, corporate plans and any amendments thereto, and for government directives to Petro-Canada.

  (ii) Even though it may not be required by law to do so:

    (A) Petro-Canada should not provide to others any assurances that it will not grant confidential discounts off its published prices to resellers or other large volume customers.

    (B) Petro-Canada should abandon its practice of obtaining and enforcing non-petroleum use convenants.

(C) Petro-Canada should continue to pursue a policy of open and non-discriminatory supply from its refineries to unintegrated marketers to the best of its ability to do so.

(iii) Petro-Canada and its employees should be made fully subject to the provisions of the Combines Investigation Act, except to the extent that acts are done pursuant to specific directive or approval of the Governor in Council.

(iv) As long as the company is publicly owned, a Committee of Parliament should review the Petro-Canada Act and the purposes and operations of Petro-Canada every five years. Such a review would be facilitated by a special report from Petro-Canada, and by a report from the Minister of Consumer and Corporate Affairs as to Petro-Canada's effect on those aspects of the public interest for which he is responsible;

(k) With respect to federal, provincial or municipal government intervention into any aspect of the petroleum industry,

(i) The Commission commends to the federal, provincial and municipal governments alike, in regard to any regulation or contemplated entry, pricing or output, the basic principles embodied in the Federal Government's policy proposals entitled *Freedom to Move: A Framework for Transportation Reform (1985).*

(ii) The experience and knowledge of the office of the Director of Investigation and Research should continue to be made fully and openly available, through both private consultations and public hearings, to assist agencies, departments and officials of all governments in regard to such regulation of specific industries as may be thought necessary in the public interest.

(iii) Aspects of the organization and performance of the downstream petroleum sector are of such general public interest and importance that it would be desirable for federal and provincial governments to consult more systematically at senior levels in order to review industry performance and to coordinate their objectives and policies to the extent possible.

(l) Restrictions on the importation of petroleum products into Canada should be avoided in order to promote competitive markets in Canada. To the extent that the Government supports continuation of a policy of open access it is important to let the industry know.

(m) Consumers should seek to strengthen their market position by drawing on their collective bargaining (or buying) power.

Many of the Commission's recommendations, directly or indirectly, related to amendments to the Competition Act. (See for example, recommendations (a), (b), (d) and (e).) When the Report was received by the government in May, 1986, Bill C-91 was before Parliament and further amendments were subsequently introduced which addressed some of the issues identified by the Commission. A number of the Commission's recommendations were already fully incorporated in the Act, while other recommendations were partially covered.

For example, the recommendation that a Competition Tribunal have jurisdiction to grant interim orders in matters affecting supply was fully covered by subsection 76(1) of the Competition Act. As well, the recommendation that Petro-Canada be made subject to the provisions of the Competition Act was fully covered by section 2.1 which subjects Crown corporations to the Act's provisions. Three other legislative recommendations were partially incorporated into the Act. Only one of these (to empower the government to exempt mergers from review by the Competition Tribunal) was rejected on various grounds after having been carefully considered during the process of reforming the legislation.

At the time that the Commission made its Report, there were no restrictions on the importation of petroleum products into Canada. The government indicated when it announced the Western Accord in May 1985 that open access to imported petroleum products was an integral part of the deregulation of the petroleum industry.

Following the public release of the Report, a number of interested parties, including associations representing branded dealers and independent resellers, certain provincial governments and some of the oil companies, made their views on the Report and its recommendations known to the Department. In December 1986 the Minister, the Honourable Harvie Andre, asked the Director to carry out consultations on his behalf with the oil companies concerning the specific recommendations that the Commission directed at their activities and to report back to him. These consultations were in progress at the end of the fiscal year.

(2) *National Farm Products Marketing Council — Seminar on the Consumer Levy*

On February 25, 1987, representatives of the Bureau of Competition Policy together with the Bureau of Policy Coordination were among the participants at a seminar sponsored by the National Farm Products Marketing Council on the consumer levy. Also present at the seminar was a Special Committee, established by the Minister of Agriculture to assist him in developing guidelines relating to the consumer levy and associated policies of the Canadian Egg Marketing Agency (CEMA). The Special Committee was to report to the Minister of Agriculture by June 1987. The consumer levy is a component in the cost of production formula used to set producer prices for eggs. The levy funds the costs incurred by the CEMA in diverting surplus eggs to processors. (Typically, prices of eggs for processing are lower than the price at which the CEMA purchases eggs that are surplus to the table market.)

In its submission, CCAC stated that the current surplus disposal system is:

(a) unfair, because the beneficiaries of the program (producers) do not pay its costs, and

(b) inefficient, because producers receive inappropriate signals about the profitability of supplying the processor market, and have no incentive to reduce either surpluses or their handling costs.

CCAC proposed the creation of a new system of surplus disposal whose costs would be borne by producers. This market approach would encourage producers to generate surpluses only to economic levels, balancing the gain of supplying a greater proportion of peak table demand with the costs of low-season surplus disposal, without distortions created by an external subsidy. It would also give producers an incentive to better match their output to seasonal demand peaks through incentive pricing systems or stronger regulation of bird placements. Finally, it would remove the limit that the consumer levy currently imposes on the size of the processing market and the regulatory process that restricts CEMA's flexibility in making production decisions.

As stated in the CCAC submission, growth in the processing sector would be more properly handled outside the surplus disposal system by private contracts for sales directly between low cost producers and processors. This would eliminate unnecessary grading, washing, packaging and handling expenses and could well result in savings as large as the current consumer contribution. It would allow producers and processors to base their decision making on accurate economic signals rather than on artificially determined levels of cross subsidy.

In the event that the Minister of Agriculture chooses to retain the current regulatory system, instead of the more market-oriented one suggested, CCAC recommended that a balance of consumer and producer interests be sought. This would be reflected, among other things, in a reduction of the levy, to correspond with CEMA's increased capacity to coordinate production and consumption and the reduced costs of surplus handling reported by the Agency. CCAC also stated that a declining amount of surplus should be permitted over time, to provide the Agency with incentives to increase efficiency. The report of the Special Committee was pending on March 31, 1987.

CHAPTER V

Services Branch

1. Activities

The main function of the Services Branch is to analyze complaints and other evidence from a broad variety of sources with respect to alleged restrictions of competition in the service and distribution industries and to conduct inquiries into those situations where inquiry is warranted. The Services Branch is responsible for all wholesale and retail distribution activities not otherwise assigned to the Manufacturing or Resources Branch, and for all other services traditionally regarded as such. These include finance, insurance and business, professional and personal services of all kinds, but do not include the distributing sectors of vertically integrated industries, in which the major activity of the industry falls within the responsibilities of the Manufacturing or Resources Branch. In addition, the Services Branch is not responsible for construction, communications, or distribution of forestry or energy products research, or for representations to boards, commissions or other tribunals pursuant to sections 97 and 98 of the Act that fall within the responsibilities of the Regulated Sector Branch.

The Branch deals with those violations of Part V of the Act that are not in the nature of misleading advertising or deceptive marketing practices, and with situations that may be reviewable under Part VII. It is also concerned with inquiries relating to proceedings under the patent and trade marks provisions of section 29 of the Act, and maintains a general surveillance of competitive issues and activities in Canada in those industries for which it has responsibility. In addition, it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by Investment Canada.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 21(1) of the Act

SECTION 32

(1) *Fort Erie Auto Body Shops*

This inquiry commenced in January 1981 following receipt of a complaint describing an agreement by eleven area body shops to fix their shop charge-out rates. During the inquiry the records of the body shops were examined.

On May 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 32(1)(c) was laid at Ottawa on May 17, 1984 against the following companies and individuals:

Dave Spear Limited
Climenhaga's Garage Ltd.
Don Dean Chevrolet Oldsmobile Limited
Erie Collision Limited
Ted Lloyd Pontiac-Buick Ltd.
Jon Beck carrying on business as Dufferin Motors
William Fickel carrying on business as Fickel's Body Shop
Sergio Rubesa carrying on business as Garrison Auto Body
Gerald Doan carrying on business as Jerry's Auto Body
Norman Page carrying on business as Page Auto Body
Orin Page carrying on business as Speedy Auto Body

The preliminary inquiry commenced on January 21, 1985, and was completed in mid-June 1985. On August 23, 1985, Dave Spear Limited and Don Dean Chevrolet Oldsmobile Limited were ordered to stand trial, and Ted Lloyd Pontiac-Buick Ltd. was discharged. The remaining accused had waived the preliminary inquiry. On April 30, 1986, Mr. Justice Barr acquitted all the accused.

(2) *Building Supplies — Swift Current*

This inquiry commenced in June 1981 following publication of a newspaper advertisement indicating that all area lumber dealers had agreed to fix the price for delivery of supplies. During the inquiry the records of the dealers were examined.

On January 11, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information under subsection 30(2) was laid at Swift Current on September 6, 1984 against Beaver Lumber Company Limited, Revelstoke Companies Ltd., Mr. Plywood Enterprises Ltd., Swift Current Building Supplies (1970) Ltd., Pioneer Co-operative Association Limited and Windsor Plywood (The Plywood People) Ltd.

Subsequently, a new Information was laid in June 1985. The respondents were advised of the claim and motion being made therein.

Copies of the claim and motion were sent to all respondents in February 1987 asking for response by the end of March 1987. At the end of the fiscal year a date for appearance had not been set.

(3) *Driving Schools — Sherbrooke*

This inquiry commenced in December 1984 following receipt of information which indicated that the driving school owners in the Sherbrooke market had met and agreed on a fixed price for driving lessons. Oral examinations commenced in Sherbrooke on April 9, 1985 but were stayed after counsel for one of the parties under investigation indicated his intention to challenge the constitutionality of the proceedings as inconsistent with the right against self-incrimination guaranteed by section 7 of the Charter.

Notwithstanding this development, the evidence gathered in this inquiry was referred to the Attorney General of Canada on December 4, 1985. On December 12, 1985, an Information containing one count under paragraph 32(1)(c) was laid at Sherbrooke against École de Conduite Lauzon Sherbrooke Ltée, André Houle, 2172-3572 Québec Inc. carrying on business as École de Conduite Asbestrie Enr., École de Conduite l'Estrie Inc. and École de Conduite Vel Inc.

On May 30, 1986, 2172-3572 Québec Inc., École de Conduite l'Estrie Inc. and École de Conduite Vel Inc. pleaded guilty and were convicted. Each accused was fined $1 000 and was made the subject of an Order of Prohibition issued on June 5, 1986.

On October 21, 1986, École de Conduite Lauzon Sherbrooke Ltée pleaded guilty and was convicted. On October 28, 1986, the accused was fined $2 000 and was made the subject of an Order of Prohibition. The charge against André Houle was withdrawn.

(4) *Pharmacy Association of Nova Scotia*

This inquiry commenced in December 1982 following receipt of information that the Pharmacy Association of Nova Scotia had agreed to implement a boycott of the third-party drug prepayment plans administered by Maritime Medical Care Inc., a major non-profit insurer. The insurer had resisted the Association's demands for an increase in the level of reimbursement paid pharmacies participating in its plans. As a result of the alleged boycott threat, the insurer was compelled to agree to the demands of the Association. During the inquiry the records of the Association were examined.

On February 15, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 32(1)(c) was laid at Halifax on February 24, 1987 against the following companies and individuals:

Nova Scotia Pharmaceutical Society
Pharmacy Association of Nova Scotia
Lawton's Drug Stores Limited
William H. Richardson
J. Keith Lawton
Empire Drug Stores Limited
Woodlawn Pharmacy Limited
Nolan Pharmacy Limited
William G. Wilson
Woodside Pharmacy Limited
Frank Forbes

At the end of the fiscal year, no date had been set for the preliminary inquiry.

SECTIONS 32 and 32.2

(5) *Driving Schools — Chicoutimi*

This inquiry commenced in December 1982 following receipt of a complaint alleging that three driving school owners in Chicoutimi had submitted bids arrived at by agreement in response to a call for tenders by the CEGEP of Chicoutimi. Searches took place in December 1982 pursuant to section 10 of the Combines Investigation Act.

On December 4, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 32(1)(c) and one count under section 32.2 was laid at Chicoutimi, Québec, on May 5, 1986 against École de Conduite Lauzon Saguenay Lac St-Jean Inc. and Michel Larouche, its owner, as well as against Roubec Auto École de Chicoutimi Enr. and Ecole de Conduite Robert Riverin Ltée and Jean-Guy Claveau, the owner of both schools.

At the conclusion of the preliminary inquiry on March 27, 1987, all the accused except Roubec Auto École de Chicoutimi Enr. were ordered to stand trial on both counts.

At the end of the fiscal year, the trial date had not been set.

(6) *Hotels — Ottawa*

This inquiry commenced in January 1985 following receipt of a complaint alleging that six major hotels in downtown Ottawa-Hull had engaged in bid-rigging of room rates for civil servants. During the inquiry the records of the companies involved were examined.

On April 10, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On May 25, 1985, an Information containing one count under each of sections 32 and 32.2 was laid at Ottawa against the following companies:

York-Hannover Hotels Ltd., carrying on business in the City of Ottawa under the name of The Skyline Hotel

Four Seasons Hotels Limited, carrying on business in the City of Ottawa under the name of Four Seasons Hotel

Delta Hotels Limited, carrying on business in the City of Ottawa under the name of Delta Ottawa

Plaza Hotels Inc., carrying on business in the City of Hull under the name of Hôtel Plaza de la Chaudière

Commonwealth Holiday Inns of Canada Limited, carrying on business in the City of Ottawa under the name of Holiday Inn of Ottawa-Centre

CN Hotels Inc., carrying on business in the City of Ottawa under the name of Chateau Laurier Hotel.

The preliminary inquiry commenced on February 3, 1986 with one accused electing to waive the preliminary. On February 11, 1986, the five remaining companies were ordered to stand trial only on the count under section 32. Subsequently, the Attorney General signed a preferred indictment and in the result all six accused were required to stand trial on both counts. On March 13, 1987, three of the accused — Four Seasons Hotels Limited, Delta Hotels Limited and Plaza Hotels Inc. — pleaded guilty to the count under section 32 and were convicted. The three accused were each fined $60 000 and made subject to an Order of Prohibition, and the charge under section 32.2 was withdrawn against these accused. The trial of the remaining accused was scheduled to commence on April 21, 1987.

SECTION 32.2

(7) *Reprographic Services — Winnipeg*

This inquiry commenced in April 1985 upon receipt of a complaint alleging that the two major reprographic service companies in Winnipeg had rigged bids on two Federal Government requests for proposals.

During the inquiry the records of Central Graphics Ltd., Hughes-Owens (Manitoba) 1985 Ltd. and Hughes-Owens Limited — Hughes-Owens Limitée were examined.

On February 7, 1986, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under section 32.2 was laid at Winnipeg on August 8, 1986 against Central Graphics Ltd. and Hughes-Owens Limited — Hughes-Owens Limitée. A second information containing one count under section 32.2 was laid against Central Graphics Ltd. and Hughes-Owens (Manitoba) 1985 Ltd. On November 5, 1986, the accused pleaded guilty and were convicted. Central Graphics Ltd. was fined a total of $60 000, Hughes-Owens Limited — Hughes-Owens Limitée was fined $20 000 and Hughes-Owens (Manitoba) 1985 Ltd. was fined $40 000. An Order of Prohibition was imposed on the companies commencing November 5, 1986.

SECTION 33 (Combines Investigation Act)

(8) *Funeral Homes — Hamilton*

This inquiry commenced in December 1981 following the receipt of information that a merger of funeral homes in Hamilton contravened the merger provision of the Combines Investigation Act.

During the inquiry the records of nine funeral companies were examined and oral examinations were conducted in Hamilton in November 1983.

On January 24, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On January 10, 1986, an Information containing one count under section 33 of the Combines Investigation Act was laid at Hamilton against Hamilton Funeral Homes Limited, Funeral Financial Services Limited and Arbor Capital Resources Inc. Also named in the Information as being parties or privy to the offence, but not charged, were Wesley George Kee and Edward Wayne Powell.

On February 9, 1987, all three accused elected to waive the preliminary inquiry. At the end of the fiscal year, a trial date had not been set.

(9) *Scrap Metal — Nova Scotia*

This inquiry commenced in January 1981 following receipt of a complaint from a small retail scrap metal dealer located in Sydney, N.S. The complainant alleged that a large scrap metal dealer operating at the retail and wholesale levels in the Atlantic region was attempting to monopolize the local trade in scrap metal by predatory and other anticompetitive practices. During the inquiry the records of the dealer were examined.

In March 1984 the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General determined in August 1986 that a prosecution was not warranted.

SECTION 34

(10) *Neptune Meters, Limited — Meters and Meter Parts*

This inquiry was initiated following receipt of a complaint in January 1980 from a meter sales and service firm alleging that Neptune Meters, Limited was engaged in a pricing policy that discriminated against the firm. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 31, 1981. On December 23, 1981, an Information containing one count under paragraph 34(1)(a) of the Act was laid at Edmonton against Neptune Meters, Limited. In June 1982 the prosecution of this case was transferred to Toronto. The Information was relaid on October 5, 1982, and the preliminary inquiry commenced on May 24, 1983 in Toronto. On June 23, 1983, the accused was ordered to stand trial but subsequently filed a motion to quash the committal. The motion was heard on November 15, 1983, but on February 28, 1984 was dismissed. The accused appealed the dismissal of its motion, but on November 20, 1984, the appeal was denied. An application by the accused for leave to appeal to the Supreme Court of Canada was heard on February 18, 1985, but on March 1, 1985 the application was dismissed.

Prior to the trial date, extensive negotiations were undertaken between counsel for the accused and the Crown. On June 2, 1986, Neptune Meters, Limited pleaded guilty to one count under paragraph 34(1)(a) and was convicted and fined $50 000. This represents the largest fine to date under this provision.

SECTIONS 34, 35 and 38.

(11) *Commodore Business Machines Limited — Computers*

This inquiry commenced in October 1982 following receipt of a complaint alleging that Commodore Business Machines Limited (Commodore) had attempted to influence upward the price at which several retailers sold computers supplied by Commodore. The complaint also alleged that Commodore granted more favourable terms to certain retailers and that some advertising material supplied by Commodore was misleading in a material respect.

During the inquiry a search of Commodore's records was conducted in May 1983. On March 28, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On April 1, 1986, an Information containing two counts under paragraph 34(1)(a), one count under section 35, one count under paragraph 36(1)(a), four counts under paragraph 38(1)(a) and one count under paragraph 38(1)(b) was laid in Toronto against Commodore Business Machines Limited.

The preliminary inquiry commenced on November 10, 1986 but was adjourned pending the result of Commodore's application in the Supreme Court of Ontario for an order to quash the authorization under section 10 of the Combines Investigation Act to search and seize documents and to retain the seized documents. On December 4, 1986, Mr. Justice Gray quashed the authorization but allowed the Director to retain those documents needed for prosecution. Commodore has filed a notice of appeal of Mr. Justice Gray's decision.

The preliminary inquiry is scheduled to resume in September 1987.

SECTION 38

(12) *Wenger Ltd. — Watches*

This inquiry commenced in the spring of 1981 following receipt of a complaint from a retailer of watches and jewellery in Chicoutimi, Québec alleging that Wenger Ltd. of Montréal had refused to supply a product to him because of his low pricing policy.

Searches were conducted in December of the same year in Montréal and Québec City pursuant to section 10 of the Combines Investigation Act. Oral examinations under section 17 of that Act were conducted in November 1983.

The evidence obtained in the inquiry was referred to the Attorney General of Canada in November 1984. On February 27, 1985, an Information containing one count under paragraph 38(1)(b) of the Act was laid at Chicoutimi against Wenger Ltd. The preliminary inquiry commenced on April 12, 1986 and had not been concluded at the end of the fiscal year.

(13) *Epson (Canada) Limited — Computer Printers*

This inquiry commenced in February 1984 following complaints from a number of retailers that Epson (Canada) Limited, a major supplier of computer printers and related products, had adopted a policy which prevented the retailers from advertising Epson products at less than the suggested retail price. Searches under section 443 of the Criminal Code were conducted in April 1984.

On January 21, 1985, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On March 13, 1986, an Information containing 23 counts under paragraph 38(1)(a) was laid at Toronto against Epson (Canada) Limited, its president, Maurice LaPalme, and its vice-president, Sam Patterson.

The preliminary inquiry was scheduled to commence on June 29, 1987.

SECTIONS 38 and 35

(14) *Roxton Furniture Limited — Wooden Furniture*

This inquiry commenced in the fall of 1982 following the receipt of a complaint from a furniture retailer in Montréal, Québec alleging that Roxton Furniture Limited had refused to supply a product to the retailer because of the retailer's low pricing policy.

Searches were conducted in Waterloo, Québec in December of the same year pursuant to section 10 of the Combines Investigation Act.

The evidence obtained in the inquiry was referred to the Attorney General of Canada in March 1985. On January 16, 1987, an Information containing two counts under paragraph 38(1)(b) and two counts under subsection 35(2) of the Act was laid in Guelph, Ontario against Roxton Furniture Limited. On February 4, 1987, the accused waived the preliminary inquiry and pleaded guilty to all counts. A fine of $12 500 was imposed for each count under paragraph 38(1)(b) and $3 500 for each count under subsection 35(2), for a total fine of $32 000. In addition, an Order of Prohibition was imposed.

3. Applications by the Director to the Competition Tribunal under Part VII

No applications were made under Part VII during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 20(2) of the Act

SECTION 32

(1) *Airport Services*

This inquiry was commenced in January 1983 when six residents submitted an application to the Director under section 7 of the Combines Investigation Act. The applicants alleged that bids, submitted by airport service companies in response to a 1981 Transport Canada tender, had been arrived at by agreement among the companies responding. The application further alleged that the same companies had conspired to rotate the winning of Transport Canada's airport service contracts among themselves over a number of years.

Inquiry into the matter determined that while it was true that the incumbent contractor typically has not won the subsequent contract for airport services, this pattern is not a manifestation of an agreement to rotate the bids. Rather, it results from the application of Canadian labour law which, under the particular circumstances, makes it extremely unlikely the the incumbent firm can successfully bid for subsequent contracts.

With respect to the allegation of bid-rigging, the representative of the applicants asserted that he would provide direct evidence of the offence as well as the names of other individuals with direct evidence of actions taken by the competing bidders. However, neither was ever provided to the Bureau nor was any other evidence obtained in the course of the inquiry which supported the allegation. As a result, the Director concluded that further inquiry was not warranted. The Director therefore discontinued the inquiry and subsequently reported his decision to the Minister in March 1987.

SECTION 32 and 33 (Combines Investigation Act)

(2) *Medical Services*

This inquiry commenced on July 7, 1986 following the receipt of an application under section 7 of the Act from six residents of Canada. In the application it was alleged that Mr. David Peterson and Mr. Bob Rae, leaders of the Liberal and New Democratic parties of Ontario respectively, violated sections 32 and 33 of the Combines Investigation Act, when on May 28, 1985, as part of the accord they signed for a reform minority parliament, they agreed to the banning of physician extra-billing subsequently enacted into law on June 20, 1986 in the passage of Bill 94 by the Ontario Legislature. It was also alleged that the passage of Bill 94 banning physician extra-billing had the effect of lessening competition in the provision of medical services in Ontario.

In considering the accord and the conduct flowing therefrom, the Director had regard to relevant jurisprudence emanating from the Supreme Court of Canada. The Court has held that the activities of provincial legislatures, flowing from their exercise of powers under the Constitution Act, 1982 did not fall within the criminal law provisions of the Combines Investigation Act. In light of the relevant jurisprudence, the Director was unable to conclude that the agreement between Mr. Rae and Mr. Peterson in respect of Bill 94 constituted a violation of any of the provisions of the Act. Accordingly, the Director discontinued this inquiry in March 1987 and subsequently reported his decision to the Minister.

SECTION 34

(3) *Voiume 1 Inc. — Buying Groups*

This matter commenced in March of 1982 following announcements in the press of the formation of the buying group Volume 1, Inc. On July 14, 1982, it was publicly disclosed that a six-resident application had been made pursuant to section 7 of the Combines Investigation Act by persons associated with the Consumers' Association of Canada. The applicants principally alleged that the buying power of the group was so great that suppliers would be coerced into price discrimination to compensate for the additional expense incurred in providing increased volume rebates demanded by Volume 1.

Volume 1, Inc. was incorporated by Dominion Stores Limited and Steinberg, Inc. which were, together with their subsidiaries, the only members of this group during the period of the inquiry. The purpose of Volume 1 was to aggregate the purchases of its members from suppliers and manufacturers in order to obtain lower prices through the attainment of larger discounts and allowances accompanying such volume buying.

It appeared that Volume 1 was not structured in such a way so as to meet the legal requirements for a true "purchaser" as this word is used in paragraph 34(1)(a) of the Competition Act. The company had purchased food store products worth millions of dollars despite remarkably limited capitalisation (Volume 1 now exists only for the benefit of the few remaining Dominion stores as Steinberg has withdrawn and joined a separate buying group). Futhermore, the group's involvement in these purchases was limited to negotiating, collecting and

distributing volume rebates, while its member "agents" conducted all other aspects of the transaction including the negotiation of price, quantity and terms of delivery. In this situation it could be argued that suppliers should not have granted rebates to Volume 1 which exceeded those normally available to its members individually. This allegation alone is not sufficient, however, to justify prosecution.

Paragraph 34(1)(a) deals with discrimination between competing purchasers in respect of a sale of articles of like quantity and quality. It would be essential to lead evidence, therefore, not only on the preceding points but also to show that at least one of many suppliers involved did not afford equivalent discounts to purchasers of like quality and quantity who competed with one or both of the joint owners of Volume 1. The inquiry did not, after very extensive effort, identify any competing purchaser subject to this situation as required by the statute.

In light of the above, the Director determined that further inquiry was not warranted and subsequently discontinued this inquiry in March 1987 and reported his decision to the Minister.

5. Director's Representations to Regulatory Boards

(1) *Office des professions du Québec*

During the 1985/86 fiscal year the following seven professional corporations applied to the Office des professions to have their tariff of fees renewed and sanctioned by the provincial authorities: Le Barreau du Québec, La Chambre des Notaires du Québec, La Corporation professionnelle des évaluateurs agrées du Québec, l'Ordre des arpenteurs-géomètres du Québec, l'Ordre des médecins vétérinaires du Québec, l'Ordre des architectes du Québec and l'Ordre des ingénieurs du Québec. The Director was invited to submit his views in writing and subsequently to participate in hearings to be held in May 1986.

In his written submission the Director took the position that provincially sanctioned tariffs do not guarantee the maintenance of a high standard of quality but may increase prices above the competitive level. Such tariffs are therefore not in the public interest and should be abolished. The Director also noted that the existence of such tariffs causes distortions on the supply side of the market for professional services.

These views were further expressed orally during the public hearings held by the Office.

The comments of the Director were well received by the Office des professions du Québec, and its final report, issued in December 1986, reflects the position of the Director.

(2) *Ontario Health Professions Legislation Review*

In May 1986, in response to a request for submissions from interested parties, the Director submitted his written comments to the Ontario Health Professions Legislation Review. The Review has been charged with the mandate of recommending to the Ontario Minister of Health which professions in the health care field in Ontario should be granted the authority to self-regulate and the most appropriate statutory framework for granting this authority. The Director submitted that certain of the restictions on competition contained in the existing Health Disciplines Act should be removed and the general powers to self-regulate currently afforded professions in the health care field should be clarified so as to remove the existing uncertainties surrounding the applicability of the Competition Act to their actions.

At year-end the process of revising the legislation was ongoing.

(3) *Financial Markets: Ontario Securities Commission Policy Review*

In November 1984 the Ontario Securities Commission (OSC) convened a policy review hearing to examine the terms and conditions under which non-resident, domestic financial and non-financial institutions are allowed to operate in the Ontario securities industry.

The Director's submissions to the OSC argued that the prevailing restrictions which govern the ownership of market intermediaries operating in Ontario have a negative impact on the ability of the capital market to fully serve the present and future needs of Canadian investors and issuers of securities.

The Director suggested that greater competition would be likely if the limitations on registration of foreign dealers were less stringent, and that the industry would be provided with greater access to capital if the permissible levels of investment in Canadian securities firms by both foreign and domestic non-industry investors were raised.

In February 1985 the OSC issued its report. Among its major recommendations was a proposal that the existing foreign and non-industry ownership limits be relaxed. The OSC's proposals are described in greater detail at page 78 of the 1986 Annual Report.

On December 4, 1986, the Ontario government announced its intention to implement new rules governing entry into and ownership of the securities industry in Ontario. Highlights of the proposals are as follows:

(a) Effective June 30, 1987,

(i) any Canadian investor including a financial institution can own 100 percent of a securities firm,

(ii) non-residents can own up to 50 percent of a Canadian dealer,

(iii) foreign-owned dealers can carry on business in the exempt (non-regulated) market with no capital limitations, and

(iv) a universal registration system will be established which will require all intermediaries in the Ontario securities industry to be registered with the OSC.

(b) Commencing June 30, 1988

(i) non-residents can own 100 percent of a Canadian securities dealer, and

(ii) foreign-owned dealers can engage in any securities activities without capital restrictions.

The Ontario government's proposals recognize the growing trend towards the internationalization of securities trading, the benefits in terms of competition and efficiency of allowing increased participation in the industry by foreign firms, and the need for the Ontario securities industry to have greater access to capital in order to compete successfully in domestic and offshore markets.

(4) *Ontario Standing Committee on Finance and Economic Affairs*

Following an invitation by the Standing Committee on Finance and Economic Affairs of the Ontario Legislative Assembly, on October 1, 1986, the Director made a presentation to the Committee during its examination of corporate concentration in the financial services sector in Ontario.

In addition to presenting a review of the provisions of the Competition Act as they apply to the financial services sector, the Director discussed the issues of concentration in financial markets and the appropriate means to deal with the problems of conflicts of interest and self-dealing. The Director argued that while there is a necessary trade-off between prudence and competition in the financial market which must always be resolved in favour of system stability, the regulatory policies adopted should not unnecessarily impede competition and economic efficiency.

The debate concerning regulatory reform, and particularly means to deal with non-arm's length transactions, was discussed in detail in the 1986 Annual Report at pages 77-80. The Director argued before the Committee that regulations must recognize that the issue is not self-dealing *per se* but rather the potential for abuse in self-dealing situations. Arbitrary rules that prohibit all non-arm's length transactions would also prohibit arrangements which might be beneficial; similarly, a stringent requirement for wide ownership, which would reduce the motivation for abusive self-dealing, would preclude firms from obtaining the benefits of being

closely held. The Director argued for a mix of regulatory proposals which would minimize interference with the competitive marketplace while ensuring appropriate prudential standards.

On the broader issue of corporate concentration, the Director made it clear that the concern emphasized by some observers that high levels of aggregate concentration represent undue accumulation of economic, social and political power is not within the ambit of the Act. Rather, the Act requires the Director to examine the extent to which aggregate concentration results in concentration and dominance in individual markets and in instances of anticompetitive practices and adverse economic effects in those markets. He discussed the various measures of concentration available to analysts, emphasizing that it is not absolute size which gives a firm the ability to influence prices but rather the firm's size in a particular market. Each market must be analyzed to take account of key factors which impact upon the degree of concentration, particularly barriers to entry and economies of scale which may dictate the minimum efficient scale of operation in an industry. At year end, the Committee had yet to issue its final report on this matter.

6. Other Matters

(1) *Monitoring Order of Prohibition — Outdoor Advertising*

The Prohibition Order issued by the Supreme Court of Ontario on February 11, 1985 in the Outdoor Advertising case is described at page 20 of the 1985 Annual Report. The Director is continuing to monitor the activities of the industry in relation to the Order of Prohibition.

(2) *Thomson Newspapers*

During an ongoing inquiry the Director made application to a member of the Restrictive Trade Practices Commission in July 1983 under subsection 10(3) of the Combines Investigation Act to authorize his representatives to conduct an examination of the records located on various premises of Thomson Newspapers Limited. While this authority was being executed, the company obtained an order from the Federal Court — Trial Division prohibiting the Director and his representatives from continuing their searches, on the grounds that section 10 of that Act was contrary to section 8 of the Charter of Rights and Freedoms.

The Crown had been granted leave to appeal the decision by the Federal Court, but, following the Supreme Court of Canada's decision in the *Southam* case, the appeal was abandoned.

Oral examinations were scheduled to commence on September 23, 1985; however, Thomson Newspapers challenged the section 17 order on the grounds that the section was contrary to the Charter.

Argument on this issue was heard before the Supreme Court of Ontario in January 1986. On March 13, 1986, the Court rendered a decision declaring that subsections 17(1), 17(2), and 17(8) of the Combines Investigation Act, in respect of the examination of witnesses under oath before a member of the Commission, do not limit the rights guaranteed by section 7 of the Charter. However, the Court also found that subsections 17(1) and 17(4) of that Act relating to the production of documents amounted to a seizure and, following the reasoning adopted by the Supreme Court of Canada in the *Southam* decision, held that those provisions were inconsistent with the provisions of section 8 of the Charter.

Both parties applied for and were granted leave to appeal. On October 23, 1986, the Ontario Court of Appeal upheld the lower Court ruling regarding the oral examination of witnesses and reversed its decision on the production of documents thus upholding the constitutional validity of section 17 of the Combines Investigation Act.

Thomson Newspapers has applied for leave to appeal to the Supreme Court of Canada.

(3) *Wholesale Travel Agencies — Western Canada*

This inquiry commenced in August 1984 following the joint announcement that three major western Canadian inclusive tour operators — CP Air Holidays, Pacific Western Holidays Ltd. and Silver Wing Holidays Ltd. — had agreed to establish a uniform schedule of commission rates to be paid to retail travel agents for the sale of their products from western Canada to continental United States destinations.

An order pursuant to subsection 17(1) of the Combines Investigation Act was issued by a member of the Restrictive Trade Practices Commission requiring representatives from seven tour companies to appear in February 1985 for oral examination. Shortly before the hearings were scheduled to commence, a request was made on behalf of CP Air Holidays to adjourn the hearings *sine die* pending the outcome of CP Air Holidays' application to the Supreme Court of British Columbia for a declaration that the oral examination procedure established in subsection 17(1) of that Act infringes section 7 of the Charter.

The application was heard in June 1985, and a decision was rendered in November 1985 upholding the Director's rights under section 17 of the Combines Investigation Act. CP Air Holidays filed a notice of appeal. At the end of the fiscal year, no date had been set to hear the appeal.

(4) *Broadcaster Communications*

This matter commenced as a result of an application received on July 9, 1985 under section 7 of the Act from six residents of Canada alleging that Broadcast News Limited, a subsidiary of Canadian Press, was engaged in certain practices reviewable under sections 31.2 and 31.4 of Part IV.1 of the Combines Investigation Act and further that Broadcast News operated its business to the detriment of the public contrary to section 33. The fact of the application was made public by the applicants.

On October 25, 1985, the Director filed an application with the Restrictive Trade Practices Commission seeking an order prohibiting Broadcast News Limited from continuing the practice of tied selling as defined in section 31.4 of the Act with respect to wire, voice and cable news products and the transmission of those products to Canadian broadcasters. This application was subsequently withdrawn by the Director on March 21, 1986 following a public announcement by Broadcast News that the transmission of the voice news signal would not be tied to the voice news product itself following implementation of a new policy on June 1, 1986.

Two matters that are related to the Director's application are noteworthy. On February 26, 1986, the Commission approved an application by Electronic News Group Inc. to appear as an intervenor at the Commission's hearings in this matter. This decision was challenged by Broadcast News by way of an application under section 28 of the Federal Court Act to the Federal Court, Appeal Division.

The second matter involved an application brought by Electronic News on March 26, 1986 before the Commission for an order directing that the Director of Investigation and Research did not have the authority to withdraw his application of October 25, 1985 without the concurrence of the Commission and furthermore, an order directing that hearings into the matter commence on April 1, 1986. The Commission heard arguments on this application on April 8, 1986. In its decision of April 10, 1986 the Commission found that, as a result of the provisions of Rule 10(2) of the Commission Rules, "until the actual proof and hearing commences before us, the Director may, in writing, withdraw his application." Electronic News challenged this decision by way of an application under section 28 of the Federal Court Act to the Federal Court, Appeal Division.

Both applications were heard by the Federal Court, Appeal Division on March 23, 1987. In its decision on the application brought by Electronic News, the Court found that Rule 10(2) of the Commission Rules was "clear and unequivocal and is to the effect that the Director of Investigation and Research may withdraw the application in question unilaterally at any time before the Commission has begun to hear the substantive matters in question". The Court dismissed both applications — the issue involved in the application by Broadcast News was considered mute given the Court's decision on Electronic News' application.

Although the Director's withdrawal of the application concluded the proceedings commenced before the Commission under section 31.4 of the Combines Investigation Act, it did not conclude his inquiry commenced pursuant to section 8 of the Act. In this regard, the Director reviewed additional information received subsequent to the withdrawal of his application. In light of this information, on May 16, 1986, the Director indicated to the parties involved that he intended to file a new application with the Commission seeking an order prohibiting Broadcast News from continuing the practice of tied selling as defined in section 31.4 of the Combines Investigation Act with respect to wire and cable news products and the transmission of those products to Canadian broadcasters. On June 23, 1986, Broadcast News unilaterally made a public announcement that the transmission of the wire and cable news products would not be tied to the wire and cable news products themselves following the implementation of a new policy on August 1, 1986. After an extensive and careful review of this announcement and consultation with the parties involved and independent industry experts, the Director concluded that he would not proceed with an application before the Competition Tribunal under the tied selling provisions of the Competition Act.

The Director has continued to monitor developments in this industry in order to ascertain that the new policies of Broadcast News have been implemented as they were announced. In addition, he has been monitoring developments with a view to identifying other issues which could raise a question under the Act. The inquiry was proceeding at the end of the fiscal year.

(5) *Rock Concert Promotions*

Based on information provided by sources outside the Bureau, the public was made aware that on June 10, 1985 the Director had received an application under section 7 of the Act which alleged that Maple Leaf Gardens Limited had a policy of refusing access to its facilities to rock concert promoters with the exception of Concert Productions International. The application further alleged that Concert Productions International's exclusive access was the result of an agreement between Concert Productions International and Maple Leaf Gardens Limited which had the effect of lessening competition, unduly, contrary to section 32 of the Act. The Director also determined that the circumstances raised an issue under section 31.2 of the Combines Investigation Act (now section 47 of the Competition Act).

In the course of obtaining additional information, a number of industry participants, including those against whom the allegations of misconduct had been made, were interviewed by the Director's representatives. Subsequently, the parties reached an agreement according the complainants access to Maple Leaf Gardens on the usual trade terms of Maple Leaf Gardens Limited.

The inquiry was continuing at the end of the fiscal year.

(6) *Motion Picture Exhibition — Nova Scotia and New Brunswick*

This matter became public as a result of a disputed application for the retention of seized documents and a cross application by Famous Players Limited and Atlantic Theatres Limited under the Charter for the return of certain disputed documents.

In a written decision, the Court held that the Crown was entitled to detain all of the challenged documents and issued a detention order pursuant to section 446 of the Criminal Code and subsection 17(5) of the Combines Investigation Act. Famous Players Limited and Atlantic Theatres Limited then applied to the Ontario High Court for *certiorari* to quash the detention order.

On June 12, 1986, the Ontario High Court adopted the lower Court's test of "potential relevance" to determine whether or not a particular document was covered by a warrant and, therefore, within the justice's jurisdiction. It considered that a justice called upon to determine whether or not a thing obtained in a search was obtained "under a warrant" is required to ask himself two questions:

(a) Does it fall within the description contained in the warrant of things which may be searched for and seized? and

(b) Is it potentially relevant to the offence set out in the warrant?

If the answer to the two questions is yes, the justice has jurisdiction to order it detained.

The disputed documents continue to be detained under seal pending the resolution of the appeal of the Ontario High Court's decision.

(7) *Liability Insurance*

This inquiry commenced on January 16, 1986 when ten members of Parliament submitted an application to the Director under section 7 of the Act for an inquiry into the substantial increases in premiums for liability insurance for Canadian businesses, municipalities and individuals. The fact that an application had been filed was widely reported in the press. It was alleged in the application that the substantial increases resulted from an agreement among insurers contrary to section 32 of the Act.

At the end of the fiscal year, the Director's inquiry into this matter was continuing.

(8) *Motion Picture Exhibition — Québec*

On January 17, 1986, Compagnie France Film made an application to the Restrictive Trade Practices Commission requesting that it compel the Director to commence a research inquiry under section 47 of the Combines Investigation Act into the distribution and exhibition of French version motion pictures in the Province of Québec. Compagnie France Film subsequently wrote to the Commission indicating that the Director was examining the matter on his own initiative and requested that the application be held in abeyance. The Commission subsequently decided it could not compel the Director to commence an inquiry.

In the fall of 1986, the examination of this matter was concluded as it was determined that grounds did not exist to cause an inquiry to be made into the matter. This outcome was communicated to Compagnie France Film.

(9) *Waterloo Law Association*

This inquiry commenced in February 1986 following the receipt of information that the Waterloo Law Association had agreed to abide by a tariff of fees for real estate legal services. In July 1986 counsel for the Association filed an application before the Ontario Supreme Court for an order quashing the search warrants on the grounds that section 32 of the Act was not applicable to the activities of the Association because it is under the regulatory authority of the Law Society of Upper Canada.

The application was heard by Mr. Justice Eberle on October 16, 1986, and on December 23, 1986 the application was dismissed. On December 29, 1986, the Association filed a notice of appeal from the decision.

At the conclusion of the fiscal year no date had been set for a hearing of the appeal.

(10) *Merger Register*

This register has been maintained by the Director since 1960. It attempts to record all reported mergers in industries subject to the Competition Act.

Accordingly, until the 1976 amendments, firms in most of the service sectors of the economy were largely excluded. Information available under the Corporation and Labour Unions Returns Act (Calura) indicates that a large number of very small acquisitions are not reported in the press. Calura information itself is not used in the preparation of the register because many companies report late, many acquisitions of extremely small companies are reported without any indication as to size, many acquisitions are of non-operating companies, and it is often impossible to tell whether there has been a real change in control.

The merger register depends upon comprehensive coverage of the major financial news media, including daily and financial newspapers, trade journals, business magazines and other publications of Canada, the United States and Britain. To the extent that the intensity of press reports of merger activity does not vary significantly from year to year, to the extent that it is accurately reported and to the extent that the canvass of press reports by the Bureau is con-

sistent from year to year, the number of acquisitions recorded in the merger register provides an indication of merger trends.

Since the Foreign Investment Review Act came into force in April 1974, the information respecting "foreign" acquisitions in the merger register now includes acquisitions allowed under the Foreign Investment Review Act, which was repealed on June 30, 1985, and the Investment Canada Act, which came into force on the same date. Information respecting reviewable investments in Canadian business enterprises by foreign persons is brought to the attention of the Director for the purpose of obtaining advice with respect to the competition policy implications of such matters. However, the information provided to the Director by the Foreign Investment Review Agency and Investment Canada would not of itself be used to initiate an inquiry or in any subsequent proceedings under the Competition Act.

Although the register does reflect a fairly comprehensive coverage of published sources of information, attempts to verify its accuracy have shown that there is a need for more adequate continuing sources of information about mergers. At this time, therefore, the merger register should not be regarded as more than an initial review of public information.

The following table shows the total number of acquisitions recorded yearly since 1960.

Year	*Foreign**	*Domestic***	*Total*
1960	93	110	203
1961	86	152	238
1962	79	106	185
1963	41	88	129
1964	80	124	204
1965	78	157	235
1966	80	123	203
1967	85	143	228
1968	163	239	402
1969	168	336	504
1970	162	265	427
1971	143	245	388
1972	127	302	429
1973	100	252	352
1974	78	218	296
1975	109	155	264
1976	124	189	313
1977	192	203	395
1978	271	178	449
1979	307	204	511
1980	234	180	414
1981	200	291	491
1982	371	205	576
1983	395	233	628
1984	410	231	641
1985	466	246	712
1986	641	297	938
*1987****	651	297	948

* Acquisitions involving a foreign-owned or foreign- controlled acquiring company (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

** Acquisitions involving an acquiring company not known to be foreign-owned or foreign-controlled (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

*** Preliminary

Erratum: The last line of the above table should read as follows:

*1987****	622	460	1 082

CHAPTER VI

Regulated Sector Branch

1. Activities

The Regulated Sector Branch is primarily concerned with the behaviour and performance of regulated industries in the telecommunications, broadcasting and transport areas. It also prepares studies on such matters as the effects of tariffs and quotas on competition in Canada.

While the Regulated Sector Branch is relatively new, the Director of Investigation and Research has had the authority to intervene before federal regulatory boards in respect of competition since the 1976 amendments to the Combines Investigation Act (now the Competition Act). The Director has, from time to time, also intervened before provincial regulatory boards with the permission of such boards or at their invitation. In addition to interventions under sections 97 and 98 of the Act, the Branch has considerable enforcement responsibility particularly in the areas of transport and telecommunications.

Since 1976, the Director of Investigation and Research has made representations before a number of regulatory bodies, among them, the Canadian Radio-television and Telecommunications Commission, the Canadian Transport Commission, the Board of Commissioners of Public Utilities for the Province of Nova Scotia, the Board of Commissioners of Public Utilities of the Province of New Brunswick, the Public Utilities Board of Alberta and the Ontario Securities Commission.

These interventions have dealt with a broad range of issues including systems and terminal interconnection in the telecommunications industry, entry in the transport industries, the effect on competition of acquisitions and joint ventures in telecommunications and transport and the introduction of more competition in both broadcasting and the securities industry.

The Director liaises with other groups during the preparation of an intervention to ensure that his representations are complementary and not redundant.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 21(1) of the Act

SECTION 32

(1) *"For-hire" Trucking — Western Canada*

The evidence gathered in this inquiry was referred to the Attorney General of Canada, and on November 5, 1979, an Information was laid under section 32 of the Act against 20 trucking companies and eleven individuals for allegedly conspiring to lessen competition in the western trucking market for less-than-truckload services.

As noted in the 1986 Annual Report at pages 66-67, the Supreme Court of Canada reserved its decision on Canadian National Transportation Limited's (CN) application for leave to appeal. On June 26, 1986, leave to appeal was granted on the basis of section 7 and paragraph 11(b) of the Charter of Rights and common law abuse of process. The appeal was heard on December 18, 1986.

As a preliminary point, the Supreme Court considered whether the grounds raised in the appeal went to a question of jurisdiction. The Court came to the unanimous conclusion that the issues raised were not jurisdictional and consequently dismissed the appeal.

On January 27, 1987, the case was returned to the Provincial Court of Alberta at which time the preliminary inquiry was rescheduled to commence June 15, 1987.

3. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 20(2) of the Act

SECTION 49

(1) *Transportation Services*

This matter involved an inquiry under section 49 of the Act concerning tied selling in transportation services. The inquiry was commenced in March 1982 following receipt of a complaint from two regional general freight carriers indicating that a railroad with which they were competing was tying the sale of transportation services for a bulk commodity to the sale of general freight services. Searches in the matter were conducted in April 1982.

The evidence obtained in support of the allegation of the complainant was not persuasive. While it was clear that a tied selling arrangement was in place, there was little evidence that it was substantially lessening or was likely to substantially lessen competition, as required by the section. Additionally, in 1983 the shipper closed its operation leading to the cancellation of the arrangement and eventually the closing of the rail line.

On the basis of the foregoing, this inquiry was discontinued, and the discontinuance was reported to the Minister on October 15, 1986.

4. Director's Representations to Regulatory Boards

Telecommunications

(1) *New Brunswick Telephone Company Limited Application for Network Extension Telephone Service*

On December 22, 1978, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for approval of proposed rates and charges for a new service to be offered by the applicant, known as Network Extension Telephone Service, i.e., radio paging service. The details of the hearings in this matter are set out at pages 64 and 65 of the 1983 Annual Report.

Following receipt of a complaint by Capital Communications and Multi-Services Ltd. requesting that the Board set tariffs for telephone answering, radio paging, and mobile radio services interconnected to the network of N.B. Tel., the Board convened a general issue hearing to consider the potential impact of systems and terminal interconnection on telephone service in the province. The issue of rates for outpulsing service (access to the telephone network and the provision of designated telephone numbers) was considered in the context of this hearing. The Director is also an intervenor in the general issue proceeding, as reported in item (7).

On June 16, 1986, the Board issued its decision on general issues relating to interconnection in the telecommunications industry in New Brunswick. As part of this decision, the Board considered the issue of outpulsing and rates to fall within their definition of level III interconnection. The Board defined level III interconnection as "interconnection to the public switched network of circuits or communication systems owned by customers or other carriers".

The Board concluded that any subsequent decision on interconnection at level III would be deferred until specific applications are received, supported by data derived in accordance with a costing system acceptable to the Board. Furthermore, the Board determined that such data would not be available until the carriers implemented an appropriate costing system, compatible with the findings of Phase III of the CRTC Cost Inquiry.

Any further complaint and or application by Capital Communications and Multi-Services Ltd. must meet the criteria established by the Board and will be considered as a separate proceeding.

(2) *CRTC Telecom Cost Inquiry — Phase III — Costing of Existing Services*

On December 15, 1981, the CRTC issued Telecom Public Notice 1981-41 announcing its intention to hold a public hearing as part of the third phase of the Telecommunications Cost Inquiry.

The Cost Inquiry was initiated by the Canadian Transport Commission in January 1972 and continued by the CRTC in April 1976, when it assumed jurisdiction over federally regulated telecommunications carriers. The proceedings are described in detail at pages 72 and 73 of the 1983 Annual Report.

At that time, it was indicated that the Director had filed written formal and reply arguments on this subject with the CRTC and was awaiting the decision of the inquiry officer who chaired the public hearings on the matter. On April 30, 1984, the inquiry officer released his report.

The Director and other parties submitted written comments on the inquiry officer's report on June 14, 1984. A summary of the report and these comments can be found at page 69 of the 1986 Annual Report.

Subsequently, the Director submitted his reply to the comments of Bell Canada and B.C. Tel on July 6, 1984. Final oral argument was presented in September 1984.

The CRTC rendered its decision in this matter on June 25, 1985. Consistent with the submissions of the Director, the CRTC rejected using the five-way split methodology proposed by Bell Canada and B.C. Tel. Instead, the CRTC elected to rely on a system similar to one currently used by the Telecom Canada companies to divide long distance revenues among themselves.

On August 8, 1986, the CRTC ordered Bell Canada and B.C. Tel to file detailed costing manuals which are required to be filed by September 30, 1987. Interested parties have until November 30, 1987 to comment.

This last phase is a very important one in that both telephone companies' methodology for allocating costs and revenues to the different classes of service will be scrutinized to ensure that the potential for cross-subsidization is minimized.

(3) *Newfoundland Telephone Company Limited — Mobile Radio and Paging Services*

On April 27, 1982, Newfoundland Telephone Company Limited (Nfld Tel) filed an application with the Newfoundland and Labrador Board of Commissioners of Public Utilities for approval of a new service to be called Dial Access to Radio Paging Service. The hearing convened on June 3, 1982 at which time Nfld Tel objected to the intervention of the Director on the grounds that the Director did not have the statutory power to appear and that his appearance was not relevant to the hearing. The Board subsequently dismissed the objection and in a written order dated June 11, 1982 permitted the Director to appear and be heard on the application.

Further details in this matter and additional background information are set out at pages 74 and 75 of the 1983 Annual Report. As reported at that time, Nfld Tel had petitioned the Supreme Court of Newfoundland, Court of Appeal, for leave to appeal the decision of the Board to grant the Director standing to appear before it on this matter. On April 18, 1984, the Newfoundland Court of Appeal allowed the appeal. The Director subsequently applied for leave to appeal this judgment to the Supreme Court of Canada, which leave was granted on October 1, 1984. The Court stated that it was predisposed to grant such leave since there were two conflicting decisions, the New Brunswick Court of Appeal having ruled in the Director's favour in relation to capacity (see item (5)) and the Newfoundland Court of Appeal having found against the Director.

The Director's factum as appellant in the Newfoundland matter was filed on October 17, 1985. The Director's factum as respondent in the New Brunswick matter was filed on March 17, 1986. On May 29, 1986, the Supreme Court of Canada heard oral arguments on both

these matters. The Court reserved judgment, and as of March 31, 1987 the decision was still pending.

(4) *Bell Canada Corporate Reorganization*

On June 23, 1982, Bell Canada announced a plan to reorganize the Bell Canada group of companies. An essential element of the reorganization would be a court-authorized "arrangement" as provided for by the Canada Business Corporations Act whereby all of Bell Canada's outstanding share capital would be transformed into share capital of Bell Canada Enterprises Inc. (BCE), a former subsidiary of Bell Canada. Through an exchange of shares, all of Bell Canada's equity investments, except those in Tele-Direct (Publications) Inc., Bell-Northern Research and Telesat Canada, would then be transferred to BCE. These transferred investments consist primarily of Bell Canada's controlling interest in Northern Telecom, a number of provincial telephone companies, Bell Canada International Management Research and Consulting Ltd. (BCI), Bell Communications Systems Inc. (BCS, a supplier of customer premises telecommunications equipment) and a number of printing and publishing companies. Thus, BCE would become the new holding company for the Bell group, and Bell Canada would become a wholly-owned subsidiary of BCE. BCE would also become the focus for strategic planning within the Bell group.

Further details in this matter are referred to at pages 78-80 of the 1983 Annual Report and at pages 60-61 of the 1985 Annual Report. In the last instance it was reported that two new Bills, C-19 and C-20, were given first reading on December 20, 1984

Bill C-19, an Act respecting the reorganization of Bell Canada, implements the major recommendations of the CRTC's report on Bell Canada's 1983 corporate reorganization. Bill C-20 is an Act to amend the Canadian Radio-television and Telecommunications Commission Act, the Broadcasting Act and the Radio Act. This Bill would allow the Cabinet to issue binding policy directives to the CRTC in telecommunications matters. It would also allow the government to remove CRTC regulation from specified competitive telecommunications services for which the need for regulation is not apparent.

Representatives of the Director participated along with representatives of the CRTC and of the Departments of Communications and Justice in the preparation of Bill C-19.

Bill C-20 received second reading on February 14, 1985 and was reported by the House Standing Committee on Communications and Culture on November 22, 1985. Bill C-19 received second reading on April 15, 1985, and was reported by the same Committee on March 26, 1986. Both Bills subsequently died on the order paper when the last session of Parliament was prorogued in September 1986.

Bill C-13, identical to the amended Bill C-19 as reported on March 26, 1986, was introduced in the House on October 24, 1986. The Bill was passed by the House of Commons on June 22, 1987 and received Royal Assent on June 25, 1987.

Bill C-20 has not been reintroduced. It is anticipated that certain parts of this Bill will be incorporated into a new Broadcasting Act.

(5) *New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of its General Tariff*

On November 3, 1982, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for an interpretation of Items 1230.2 and 1600.3 of its General Tariff respecting Network Extension Telephone Service (i.e., radio paging) and Call Completion Service (i.e., telephone answering service). Specifically, N.B. Tel requested Board approval of an interpretation that would permit the company to eliminate hook-up charges for those customers transferring to Network Extension Telephone Service or Call Completion Service from the services offered by radio common carriers whose assets the company had acquired. This matter was described in detail at page 81 of the 1983 Annual Report.

At that time the Director was considering the advisability of an appeal against the ruling of the Board that the Director did not have capacity as a person to intervene before it, a decision based upon the ruling of Justice Pace of the Supreme Court of Nova Scotia, Appeal Division, discussed at pages 63 and 64 of the 1983 Annual Report.

On June 1, 1983 the Director made an application to the New Brunswick Court of Queen's Bench for a judicial review of the ruling of the Board, which application was dismissed by Justice Hoyt on November 16, 1983.

Justice Hoyt's decision was subsequently appealed by the Director to the New Brunswick Court of Appeal. On April 6, 1984, the Court, in allowing the appeal, concluded that the Board and the trial judge in the Court of Queen's Bench were in error in concluding that the Director did not have the power or capacity to appear or be represented before the Board.

On June 18, 1984, N.B. Tel also filed an application for leave to appeal from the April 6, 1984, judgment. On October 1, 1984, the Supreme Court of Canada granted leave to appeal from the decision of the Court of Appeal of New Brunswick regarding the Director's capacity to appear before provincial tribunals. The Court commenced proceedings by stating that it was predisposed to grant such leave since there were two conflicting decisions, the New Brunswick Court having ruled in the Director's favour and the Newfoundland Court having found against the Director (see item (3)).

In a separate proceeding, N.B. Tel made an application for Statement of Claim filed in the Federal Court of Appeal concerning a subsequent decision of the Board to allow the Director to appear in a general issue hearing on systems and terminal interconnection (see item (7)). A stay of proceedings has been agreed to by both parties pending a decision from the Supreme Court of Canada.

The Director's factum as appellant in the Newfoundland matter was filed on October 17, 1985. The Director's factum as respondent in the New Brunswick matter was filed on March 17, 1986. On May 29, 1986, the Supreme Court of Canada heard oral arguments on both these matters. The Court reserved judgment, and as of March 31, 1987 the decision was still pending.

(6) *Services Using the Vertical Blanking Interval or Sudsidiary Communication Multiplex Operation*

In reponse to CRTC Public Notice 1983-77, the Director submitted comments to the CRTC on July 29, 1983 on the appropriate regulatory treatment of services to be offered in the future on a commercial basis by broadcasting undertakings using the vertical blanking interval (VBI) and Subsidiary Communication Multiplex Operation (SCMO).

As reported at page 63 of the 1985 Annual Report, the CRTC took a two-phased approach to regulating the use of VBI and SCMO facilities. The first phase, in keeping with the Director's recommendations, involved the CRTC's announcement that it would not require broadcasters to obtain a licence for the use of the VBI and SCMO and that no limitations would be imposed on broadcasters with respect to the type of services they may offer. Furthermore, cable companies were ordered to carry VBI and SCMO services unless technical considerations dictated otherwise.

The second phase of the CRTC's plan will simply involve reviewing the experience with the Phase I decision to determine whether there is any need for modifications to the plan. To this end, the CRTC has instructed licensees authorized to provide VBI and SCMO services to file reports on their experience and progress by December 31, 1986.

As of March 31, 1987, the CRTC had yet to issue further directions on this matter.

(7) *Interconnection in the Telecommunications Industry in New Brunswick*

On September 12, 1983, the Board of Commissioners of Public Utilities of the Province of New Brunswick issued a notice announcing that a public hearing would be held to consider issues relating to interconnection in the telecommunications industry in New Brunswick.

The Director filed a written submission with the Board on March 5, 1984 along with the evidence of two expert witnesses who appeared on the Director's behalf during public hearings held in May and August 1984.

Further details in this matter and additional background information are set out at pages 64 and 65 of the 1985 Annual Report and pages 72 and 73 of the 1986 Annual Report. On June 16, 1986, the Board released its decision in this matter. The Board approved the right of residential and business subscribers to own their own telephone terminal equipment and attach this equipment to the public telephone network. The Board further ruled that it will consider private line and public long distance system interconnection applications in the future. However, these types of applications will be considered only after a suitable costing methodology has been approved and implemented. N.B. Tel was given ninety days to file unbundled rates for terminal attachment prior to the Board initiating further hearings to consider these rates and any other issues arising from its decision.

N.B. Tel filed unbundled rates for terminal attachment on September 15, 1986, and related evidence on September 16 and 26. The Director's Notice of Intervention and comments on the evidence were filed on October 15, 1986. A pre-hearing conference was held on October 20, 1986 at which the Director's status as an intervenor was challenged. Written briefs on the issue of status were filed on November 14, 1986, and oral arguments were presented on November 20, 1986. At the conclusion of the oral arguments, the Board ruled that the Director be granted status to appear.

Interrogatories were subsequently filed on December 10, 1986, and a public hearing was held from February 9 to 13, 1987. Oral final argument and reply were presented on February 18 and 19, 1987. In this proceeding, the Director argued that N.B. Tel's proposed network access rates appeared discriminatory for those customers who chose to own their terminal equipment. The Director further argued that interim safeguards similar to those established by the CRTC were required pending the development of an appropriate cost accounting methodology. A legal argument pertaining to the Board's jurisdiction to order such safeguards was also presented.

As of March 31, 1987, the decision of the Board was still pending.

(8) *Attachment of Customer-owned Terminal Equipment to the Public Switched Network in Nova Scotia*

This matter was referred to in detail at pages 65 and 66 of the 1985 Annual Report.

On December 23, 1985, the Nova Scotia Board of Commissioners of Public Utilities issued their decision which denied authority to Maritime Telegraph & Telephone Company, Limited (Maritime Tel) to sell and lease in-place terminal equipment before the establishment by the company of a separate terminal equipment division. In making this decision, the Board agreed with the Director and concluded that the pricing approach proposed by Maritime Tel would not maximize the contribution to be obtained from the sale and lease of multiline terminal equipment. The Board also agreed with the Director's concerns about the divestiture by Maritime Tel of its terminal assets before the real value of those assets had been established.

A project team consisting of telephone company and Board representatives and a private consultant has been working since May 1985 to develop appropriate changes to Maritime Tel's accounting systems to allow suitable tracking by the Board. This has involved an extensive and detailed cost study process to determine the proper procedures for the allocation of all revelant costs to the competitive separate (in an accounting sense) terminal division.

On February 5, 1986, the Director wrote to the Board noting the importance of the structural separation issue and recommended that the Board consider a public process to review the adequacy of the separation, accounting and reporting mechanisms proposed by Maritime Tel. In its response of February 14, 1986, the Board indicated that on completion of the project team study and report, it would decide on the proper process for implementation of the necessary regulations. On May 16, 1986, Maritime Tel filed a report, accepted by the project team, on the development of appropriate costing procedures relating to the activities of the terminal division.

On September 17, 1986, the Board issued an Order of Implementation which approved the report as a suitable basis upon which to examine the financial performance of the terminal division of Maritime Tel. A test period commenced as of January 1, 1987, and the Board will evaluate the results of the test period after December 31, 1987. Maritime Tel has been ordered to file, on a confidential basis, detailed monthly reports on the financial results of the terminal division and to continue filing monthly reports respecting sales of multi-line equipment, consumer telephone products and lost sales of terminal equipment. In addition, the Board has ordered Maritime Tel to file quarterly financial summary reports on profit and loss for public review and comment by interested parties. In making this order, the Board has rejected the need for a public process prior to implementation of the separate terminal division.

(9) *Enhanced Services*

This matter arose from an application to the CRTC by Bell Canada in December 1980 for approval of a voice message service. The service permits subscribers to place a message in Bell's voice transmission network and have it delivered at a specified time or, in the event of no answer, to have it repeated until delivered. This matter was referred to in detail at pages 66 and 67 of the Director's 1985 Annual Report.

On August 13, 1985, the CRTC released Telecom Decision CRTC 85-17, which identified those carrier services to be considered enhanced pursuant to the definition provided in Telecom Decision CRTC 84-17. Service offerings singled out for specific review were Datapac Access Arrangements and speed conversion. The carriers argued that both these services should be considered as a basic service offering. In the case of Datapac Access Arrangements, the CRTC concluded that it should be classified as enhanced since any application was not limited to the offering of transmission capacity for the movement of information. In regard to speed conversion, the CRTC agreed with the carriers that this particular application did not modify the content, code or protocol of a subscriber's information. Hence, speed conversion is not an enhanced service feature.

As previously reported, the CRTC in Telecom Public Notice 1985-8 dated January 25, 1985 had requested public comment on the submissions of all federally regulated common carriers concerning a proposal to replace individual rate evaluation studies with an aggregate study for all enhanced services, to be filed on an annual basis. As of March 31, 1987, a decision from the CRTC on this matter was still pending.

(10) *Interexchange Competition and Related Issues*

This matter was initiated upon an application by CNCP Telecommunications to the CRTC for permission to interconnect with the telephone networks of Bell Canada and B.C. Tel for the purpose of competing with those companies in the provision of long distance (interexchange) public telephone service. Also at issue in the resulting CRTC proceeding was whether to facilitate increased telecommunications competition by eliminating the prevailing carrier tariff restrictions on resale and sharing. Further details on this matter are set out at pages 68 and 69 of the Director's 1985 Annual Report.

On August 29, 1985, the CRTC released Telecom Decision CRTC 85-19 which denied CNCP's application to compete with Bell Canada and B.C. Tel in the provision of long distance telephone service. Details of the decision in this matter are set out at pages 74 and 75 of the 1986 Annual Report.

On March 7, 1986, the CRTC issued Telecom Public Notice 1986-26 requesting comments on an application submitted to the CRTC by CNCP for review of Telecom Decision CRTC 85-19. The Director filed written comments on May 9, 1986 in which he agreed with CNCP's argument that a new principle had arisen from the contribution freeze ordered by the CRTC in the Decision and its effect on CNCP's business plan and financial viability. CNCP's final reply was filed on July 18, 1986.

On October 31, 1986, the CRTC issued Telecom Decision CRTC 86-18 which denied CNCP's application for review. The CRTC concluded that CNCP had failed to satisfy any of the established criteria for a section 63 review.

(11) *Cable Television Rate Indexing*

On February 15, 1985, in response to CRTC Public Notice 1984-305, the Director submitted comments to the CRTC opposing its proposal to permit cable television companies to increase their monthly fees annually by a maximum amount equal to 80 per cent of the annual increase in the Consumer Price Index without the prior approval of the CRTC.

In his submission the Director argued that rate indexing is not an appropriate regulatory treatment of cable rates given the industry's natural monopoly characteristics and the associated need to effectively scrutinize rates as a means of protecting the public interest. In this regard the Director argued that rate indexing would not allow the CRTC to protect subscribers from excessive rates because indexing does not (a) compel cable firms to reduce costs,(b) provide the CRTC with the opportunity to pressure cable firms to reduce costs, (c) ensure that monopoly rents are applied to developing the Canadian broadcasting system in accordance with the firm's licence to operate, (d) provide an incentive to improve productivity, (e) ensure that productivity gains that may occur are reflected in rate adjustments, and (f) pass through to subscribers the regulatory cost savings that might result from indexing.

On February 13, 1986, the CRTC issued Public Notice CRTC 1986-27 entitled *Proposed Regulations Respecting Cable Television Broadcasting Receiving Undertakings*. As originally proposed, the Regulations allow cable television companies annual rate adjustments of up to 80 per cent of the percentage increase in the Consumer Price Index without the prior approval of the CRTC.

On August 1, 1986, the CRTC enacted the cable television regulations, contained in Public Notice 1986-182, in their final form. The provisions addressing partial indexing were not altered.

(12) *Telesat Canada/Telecom Canada Connecting Agreement*

On July 15, 1985, the CRTC received an application from Telesat Canada and Bell Canada for approval to amend the system interconnection agreement (Connecting Agreement) made between Telesat and the members of Telecom Canada on December 31, 1976.

Under the proposed amendments, Telesat would be permitted to develop, market and sell all satellite services to any end- users. The existing agreement required that Telesat limit its sales of satellite services to telephone companies only. Other changes included introducing a ceiling on transfer payments from Telecom Canada until their discontinuation in 1987 and allowing the leasing of partial radio channels to non-telecom users. The Director filed a letter of intervention on August 14, 1985.

The Director was of the opinion that the amendments removed important constraints to competition within this market and therefore should be viewed positively. The Director also submitted that these changes would provide Telesat with greater corporate independence and encourage aggressive marketing on the part of Telesat. This, in turn, would stimulate the introduction of new satellite services in the provision of long-haul data video and other private line services.

Although in the Director's opinion the Connecting Agreement would be substantially improved by the proposed amendments, he nevertheless submitted that the overall agreement still contained conditions and constraints that continued to impede Telesat's ability to diversify and effectively compete with terrestrial carriers, thereby offsetting many of the benefits generated by the amendments.

Consequently, the Director recommended that the amendments to the Connecting Agreement be given interim approval by the CRTC but requested that the proposed Connecting Agreement as a whole be given a fuller public examination before any final decision was made. The CRTC rejected this request and on August 21, 1985, granted interim approval of the amendments.

The CRTC rendered its final decision in this matter on May 8, 1986. The CRTC supported the Director's opinion that the Connecting Agreement would be improved by these

amendments and approved their implementation. However, the CRTC concluded that it was not desirable at this time to broaden the scope of the proceeding to include further public proceedings.

(13) *British Columbia Telephone Company — Purchasing Policy*

On July 23, 1985, B.C. Tel, in a letter addressed to the CRTC, advised that the company wished to abandon its existing competitive bidding purchasing policy. It informed the CRTC that the company would instead favour Microtel Inc. as its supplier of first choice. The company also suggested that a price comparison test would be relied upon to ensure that the prices paid for its telecommunications equipment purchases were just and reasonable. The CRTC, in Public Notice 1986-11 of February 14, 1986, called for public comments on this matter.

Further details in this matter are referred to at pages 76 and 77 of the 1986 Annual Report.

The Director, who submitted written comments on the matter in April 1986, concluded that contrary to B.C. Tel's claims, and as evidenced in the company's public filings, an extensive flow of proprietary information is being exchanged between B.C. Tel and its affiliates, and the present purchasing agreement is not threatening Microtel's future financial viability.

The Director was also of the opinion that price comparison studies are not an efficient and reliable means of ensuring that the equipment purchased by a vertically integrated carrier from its subsidiary, as is the case for B.C. Tel and Microtel, constitutes necessary procurements or that the prices paid for such equipment or its equivalent are the lowest available.

The availability to Microtel of an expanded captive market in B.C. Tel purchases was also seen as leading Microtel to become risk averse and thereby would be disinclined to develop new products and markets.

Finally, the Director argued that the new purchasing agreement would foreclose the B.C. telecommunications equipment market to potential competitors who might be more efficient and innovative than Microtel.

The CRTC in its November 10, 1986, decision agreed with the Director's position. The line of reasoning followed in the decision in rejecting B.C. Tel's request closely followed the arguments presented in the Director's submission. Furthermore, B.C. Tel is required to adhere to its present competitive purchasing procedure until it can demonstrate that a change would maintain subscriber protection at its present level.

(14) *Resale of Primary Exchange Service*

In Telecom Decision CRTC 85-19, the CRTC indicated that it was prepared, in the near future, to permit firms to acquire bulk local telephone service from federally regulated carriers for the purposes of reselling such service in competition with the telephone companies. The CRTC directed carriers to file comments on these issues by November 26, 1985.

On January 23, 1986, the CRTC issued Telecom Public Notice 1986-8 inviting comments from all federally regulated carriers and other parties on the November submissions of the carriers and, in particular, on the impact of permitting resale to provide primary exchange voice services.

The Director and other parties submitted written comments on March 28, 1986. Further details in this matter appear at page 77 of the 1986 Annual Report.

Reply comments by interested parties were filed on April 25, 1986. The Director did not file any reply comments. On February 12, 1987, the CRTC released Telecom Decision CRTC 87-1 which concludes that resale to provide primary exchange service is in the public interest. The CRTC agreed with the arguments of the Director and other interveners that competitive entry into the provision of local telephone service would provide a number of benefits to telephone subscribers and consumers. Based on the costing and revenue evidence before it, the CRTC further concluded that there was little opportunity for uneconomic entry by potential sellers into this market. The CRTC therefore dismissed the telephone company's arguments warning of significant contribution erosion.

The Commission, however, denied the joint application by Canadian Business Telecommunications Alliance and the Association of Competitive Telecommunications Suppliers that subscribers be allowed to own and operate pay telephones. The Commission expressed concern that competition in this particular service market would focus primarily on the most lucrative pay telephone locations. This in turn would create a competitive disadvantage for the telephone companies who, in the past, have been encouraged by the CRTC to provide pay telephone service in locations where costs often exceed revenues. All federally regulated carriers have been instructed by the CRTC to file tariffs which, once approved, will implement this Decision.

(15) *Bell Canada Revenue Requirement*

In Telecom Public Notice 1985-86 of December 23, 1985, the CRTC noted that an appropriate rate of return for Bell Canada had not been reviewed in an oral public hearing since 1951. The CRTC stated that given Bell Canada's current forecasts, it would be appropriate to review the company's cost of equity for the years 1985, 1986 and 1987. The CRTC indicated that other issues arising from Bell Canada's reorganization (see item (4)) would also be addressed in the context of this proceeding.

After a lengthy process for interrogatories, a public hearing to review this matter commenced on June 2, 1986. The Director participated in these proceedings. The focus of his intervention was to review the extent and magnitude of resource transfers within the Bell Canada group of companies and on the need to develop general regulatory procedures to ensure that such transactions do not unfairly disavantage competitors of Bell Canada affiliates.

On October 14, 1986, the CRTC issued its decision in this matter. Following the examination of Bell Canada's financial performance for the years 1985 and 1986 and the company's forecasted results for 1987, the CRTC concluded that the maximum rate of return on common equity for revenue requirement purposes would be 13.75% for 1986 and 12.75% for 1987. Based on these figures, the CRTC determined that the company had earned excess revenues in 1985 and 1986 amounting to $206 million and that revenue adjustments of $234 million could be required for 1987. The CRTC ordered that the $206 million be returned to subscribers through a one time credit on local service and that the 1987 revenue be adjusted by lowering long distance telephone rates for 1987.

Concerning the regulation of intercorporate pricing issues, the CRTC was supportive of the Director's arguments and incorporated many of his recommendations in its final decision. The CRTC noted that inappropriate pricing could occur between Bell and its affiliated companies in the absence of an objective and final control procedure. The company was directed to implement new accounting procedures and modify existing ones in order to allow the CRTC greater ability to monitor and track possible inappropriate transfers between non-arm's length companies. The CRTC has initiated follow-up procedures to review Bell Canada's proposals and changes. The Director is a registered participant.

Bell Canada is currently appealing the CRTC's decision relating to the $206 million credit on local service to subscribers.

(16) *Cellular Radio*

On November 22, 1985, Cantel Cellular Inc. wrote to the CRTC advising that it had serious concerns over whether intercorporate transactions between federally regulated telephone companies and their cellular subsidiaries were being carried out at arm's length.

On February 19, 1986, the CRTC issued a public notice announcing its intention to review the degree of separation between the activities of federally regulated telephone companies and those of their cellular affiliates. The Director submitted written comments on this matter on December 19, 1986.

The Director argued that the regulatory treatment and tracking requirements of intercorporate transactions were, in the context of this proceeding, inadequate. In particular, these

requirements did not ensure effective and timely detection of cross-subsidization or undesirable cost allocations between parent and affiliated companies.

Based upon his review of the responses to interrogatories filed by the carriers, the Director argued that there was considerable uncertainty whether the carriers, in spinning off their cellular subsidiaries, maintained an arm's length relationship with the new ventures. In light of this uncertainty, the Director recommended that the CRTC undertake a detailed review of all transactions involving the carriers and their cellular affiliates. It was suggested that particular attention should be focussed on whether these intercorporate transactions were based on fair market value and whether all start-up and developmental costs had been properly allocated.

The CRTC is still deliberating on this matter.

(17) *Newfoundland Telephone Company Limited — Terminal Attachment*

On June 19, 1986, Corner Brook Pulp and Paper Limited, Memorial University of Newfoundland, Western Memorial Hospital Corporation, the General Hospital Corporation, the Governing Council of the Salvation Army Canada East, St. Clare's Mercy Hospital and the Waterford Hospital Board filed an application with the Newfoundland and Labrador Board of Commissioners of Public Utilities for permission to attach customer-owned telephones to the public switched network of Nfld Tel. The application was filed as a complaint under Section 81 of the Newfoundland Public Utilities Act which requires the Board to investigate the matter and convene a public hearing.

The Board convened a pre-hearing conference, identified by the Board as Phase I of the hearing, on September 17, 1986 to hear submissions by Newfoundland Telephone Company Limited (Nfld Tel), the complainants, the Director and other interested parties concerning the nature of their evidence, notice of their intention to obtain information and to call expert witnesses and the filing of evidence.

On November 5, 1986, the Director filed with the Newfoundland Board the written testimony of his two expert witnesses. These submissions argue that competition in the provision of telecommunications terminal equipment will provide subscribers with an enhanced choice of equipment, lower prices and increased efficiency and flexibility.

Public hearings were scheduled to commence April 7, 1987.

(18) *CNCP Application for Regulatory Exemption*

On September 10, 1986, CNCP Telecommunications filed an application with the CRTC for orders exempting CNCP from (a) the requirement to file tariffs for their offerings, subject to certain procedures and (b) the requirements of the Costing Inquiry.

In support of its request, CNCP has argued that it is not a dominant force in any of the markets that it serves, offers no monopoly services and that the prices it charges for its services are dictated by market forces which ensure just and reasonable rates. CNCP submits that it should be regulated in a manner which reflects its competitive environment.

On October 24, 1986, the CRTC issued a public notice indicating that it would review CNCP's request in public hearings and set out the procedures to be followed.

The Director filed his letter of intervention on March 13, 1987. At the same time he submitted a request for responses to interrogatories and expert evidence. This evidence focusses on four broad issues relating to regulatory forbearance. First, regulatory forebearance is defined and set in the context of current developments in telecommunications. Second, the statutory authority of the CRTC in this matter is reviewed and the newly emerging relationship between regulation and competition policy is discussed. Finally, prospective areas for regulatory forbearance are identified.

Public hearings on this matter were scheduled to commence on May 11, 1987.

(19) *Saskatchewan Telecommunications' 1985 Net Income Study and Financial Targets*

On January 21, 1987, the Saskatchewan Public Utilities Review Commission announced that a public hearing would be held to consider Saskatchewan Telecommunications'(SaskTel) 1985 Net Income Study and Financial Targets. The purpose of the hearing is to determine if a cross-subsidy exists from SaskTel's regulated to its unregulated activities and to consider measures which might be taken to prevent such subsidies from occurring in the future.

On March 2, 1987, the Director registered as an intervenor in the matter. Interrogatories on the pre-filed evidence of SaskTel were submitted by the Director on March 6, 1987. Expert evidence was to be filed on April 10, 1987.

A public hearing on this matter has been scheduled for May 4-8, 1987.

Transport

(20) *Federal Express — Application to Amend its Commercial Air Services Licence*

In December 1982 the Director intervened before the Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) in support of an application by Federal Express to amend its licence. Details of the ATC hearing and decision can be found at page 82 of the 1984 Annual Report. The decision was appealed to the Federal Court by Canada Post Corporation and Loomis Courier Service Ltd. On October 9, 1985, Loomis discontinued its action in the Federal Court. As of March 31, 1987, no hearing date had been set for the Canada Post appeal.

(21) *Prairie Provinces Joint Hearing — Trucking*

In August 1985 the Director filed a statement of intervention before a joint hearing of the Alberta, Manitoba and Saskatchewan Motor Boards examining the issue of designating certain commodities "the transportation of which may be taken without a requirement to prove public convenience and necessity". Additional information on this matter appears at page 82 of the 1986 Annual Report.

On April 4, 1986, the Saskatchewan Highway Traffic Board issued a decision designating several commodities as ease of entry commodities. The decision of the Board reflected in part the Director's submission.

(22) *Roadway Express, Ltd. — Intervention before the Ontario Highway Transport Board*

On May 10, 1985, the Director filed a statement of intervention before the Ontario Highway Transport Board (OHTB) in the matter of an application by Roadway Express, Ltd. to transfer to itself operating licences held by Harkema Express Lines Ltd. The intervention argued that allowing the transfer would be beneficial to competition.

The public hearing in this matter commenced on May 28, 1985 during which the direct evidence of the applicant was introduced. A second session of the hearing commenced on October 28, 1985. At this stage, the Director introduced evidence through an expert witness. The gist of that evidence was that allowing the entry of large American carriers into the transborder trucking market would not substantially harm the operators of Canadian trucking firms. The expert witness cited the experience in Québec, where American firms have operated for several years, and empirical evidence in Québec and the United States showing that in certain trucking markets, specifically short-haul, less-than-truckload service, smaller firms have an operational advantage over firms such as Roadway, which specialize in long-haul, less-than-truckload services.

On December 28, 1985, the OHTB rendered its decision recommending that the Ontario Minister of Transportation and Communications allow the transfer. A motion for judicial review of the Minister's decision by objectors to the application was rejected on December 1, 1986.

(23) *Proposed Regionalization of General Freight Carriers — Manitoba*

On October 15, 1985, the Director filed with the Manitoba Motor Transport Board a letter of intervention in response to the public notice of July 18, 1985 relating to the Board's proposal to regionalize the operating authorities of general freight carriers.

In his letter, the Director offered comments on the likely effects of this proposal and indicated that he would submit evidence at any subsequent hearings on this matter. Such evidence would demonstrate that the best protection the Board could offer to smaller carriers from being taken over by the larger ones is to create an environment that will allow them to become more effective, cost competitive and innovative.

At the end of the fiscal year, the Board had not yet called such hearings.

(24) *House of Commons Standing Committee on Transport — Review of Bill C-18 and Bill C-19*

The 1986 Annual Report discussed the Director's submission to the House of Commons Standing Committee on Transport further to its review of the white paper on transportation policy entitled *Freedom to Move*. This policy document presented the Federal Government's proposals to introduce significant reforms to the economic regulation of the transportation industry in Canada. These reforms, if implemented, would result in a greater reliance on competition and market forces in this sector of the economy by reducing the level of direct regulation currently present.

Freedom to Move provided the basis for Bill C-18 (an Act respecting national transportation) and Bill C-19 (an Act respecting motor vehicle transport by extra-provincial undertakings). These Bills were introduced into the House of Commons in November 1986. They received second reading and were referred to the Standing Committee on Transport in February 1987.

On March 5, 1987, the Director made a written submission to the Committee which specifically addressed the issue of predatory pricing in the trucking industry after regulatory reform. Concerns had been expressed by members of the industry as well as by various members of the Standing Committee regarding the susceptibility of the Canadian trucking industry to potential predatory pricing by large American trucking firms, which under the proposed regulatory changes would have relatively free access to the Canadian market. These same individuals were also of the view that the provisions of the Competition Act would not be effective in combatting these practices should they arise.

The Director's submission addressed these concerns by discussing the effectiveness of the relevant provisions of the Competition Act establishing that Canadian trucking firms were able, in the majority of cases, to compete effectively with their U.S. counterparts and noting that the trucking industry does not exhibit the necessary characteristics required to allow successful predation.

Appearances before this Committee were made by representatives of the Director on March 5, 1987 when specific questions on the submission were dealt with, and by the Director on March 25, 1987 when competitive issues of a more general nature were addressed.

(25) *Scowan Committee*

In February 1986 the Québec government formed the Scowan Committee to examine the issues of privatization and regulatory reform in a number of industrial and service sectors of the economy. At the invitation of a member of the Committee, the Director made a submission outlining his views and experience with these issues from a competition standpoint.

The submission identified the advantages and disadvantages of regulation generally and gave specific analysis and recommendations with respect to the transport and service sectors, particularly on the issues of pricing and entry control.

The Director's submission was well received and the Committee's report, issued in June 1986, reflected many of its recommendations.

(26) *Populaire Express Inc.*

On July 4, 1986, the Director filed an intervention statement before the Québec Transport Board (QTB) in the matter of an application by Populaire Express Inc. for a permit to operate an interprovincial bus service.

The Director, noting the new regulation of the QTB allowing, for the first time, applications for competitive service, intervened in favor of Populaire Express. The statement outlined the important role of competition in the bussing industry which is currently characterized by excessive regulations and monopoly route awards, and the resulting benefits of increased competition for both the user and the carrier in terms of lower prices, higher demand and more efficient operations.

The validity of the above mentioned regulation was challenged by Voyageur Inc. and a judgment was rendered declaring the new regulation *ultra vires*. New legislation was introduced in November 1986 and passed into law in December 1986.

Notwithstanding the new law, on February 10, 1987, Populaire Express withdrew its application.

(27) *Manitoba Private Truck Hearing*

From June 16 to 20, 1986, the Manitoba Motor Transport Board held public hearings on proposed reforms respecting private driver pool operations. These hearings were held to establish Board policy regarding private trucking and related issues. They were particularly relevant since the increased flexibility offered by some of the proposed reforms would increase the efficiency of private carriage.

The Director intervened in this matter with a written submission and presented outside expert evidence. The Director supported reforms which would allow greater flexibility and increased efficiency on the part of private carriers. Specifically, the Director recommended that intercorporate hauling be allowed at a 51 per cent ownership level and that single source leasing be allowed on an as needed basis with complementary backhaul leases.

The decision in this matter was handed down on February 27, 1987. With the exception of single source leasing, the Board adopted the reforms that the Director had supported and recommended. The single source leasing provisions implemented by the Board were, however, much more flexible than those that had previously existed. The Board did not allow complementary backhaul leases for private carriers but did allow full trip leases provided certain requirements were fulfilled by the private carrier. The reforms will improve private carriers' efficiency and provide the flexibility needed by them during periods of peak activity.

5. Other Matters

(1) *Monitoring Order of Prohibition — The Transportation of Used Household Goods*

The Prohibition Order issued by the Supreme Court of Ontario on December 15, 1983 is described in the 1984 Annual Report at page 24. The Bureau is continuing to monitor compliance with the order, assist in any questions with respect to its application and promote increased competition within the industry.

(2) *Canadian Conference of Motor Transport Administrators*

In June 1984 a member of the Director's staff became an *ad hoc* member of the Standing Committee on Motor Carriers of the Canadian Conference of Motor Transport Administrators (CCMTA). The CCMTA is an organization of motor carrier regulators and transport policy makers in Canada, including representatives of all the provinces, the territories and the Government of Canada. The Standing Committee on Motor Carriers has been charged with implementing a series of reforms in the regulation of extra-provincial trucking announced by

the federal and provincial Ministers of Transport in May 1984. A major objective of these reforms is to increase the level of competition in this sector of the economy.

During the year, the group continued its work on implementation of economic regulatory reform with the issuance of a report on the economic impact of such reforms in the transborder trucking market, work on a safety code, and examination of the proposed new federal legislation on extra-provincial trucking, Bill C-19.

(3) *Container Shipping Services — Port of Montréal*

This matter relates to the disposition of documents seized under section 10 of the Combines Investigation Act which the Federal Court has ordered retained by the court administrator pending the resolution of the challenge to these seizures under the Charter of Rights and Freedoms. The facts of this particular case are summarized at pages 92 and 93 of the 1984 Annual Report.

As of March 31, 1987, the documents in question were still deposited with the Federal court administrator.

(4) *Airport Management Task Force*

In the May 1985 budget the government announced that options for a new self-sustaining system for managing federal airports were being developed. This initiative was given further support in the Transport Canada discussion paper *Freedom to Move* as well as in the report of the Neilsen Task Force.

In September 1986 a governmental committee, which had earlier been struck by the Minister of Tranport to examine many of the outstanding issues, released its report. That report urged that the existing management system for federal airports be revamped and that, where possible, local authorities be encouraged to operate airports.

The Director's staff maintained close contact with the committee during its deliberations to ensure that the competition policy concerns associated with various management schemes were addressed. Contact is now continuing at the inter departmental level to ensure that sound economic and competition principles are protected in any new system which may be implemented.

(5) *Transborder Trucking Studies*

As reported in the 1986 Annual Report, the Director commissioned two separate transborder trucking studies in an attempt to measure the potential competitive impact of increased participation by U.S. carriers in the Canadian trucking industry as a result of regulatory reform.

One study focussed on Québec and studied the effect of U.S. participation on the intra-Québec as well as the Québec-U.S. trucking markets. Québec, as contrasted with other Canadian provinces, has allowed U.S. carriers to operate in its province for a number of years and therefore provides direct evidence on the impact of U.S. competition.

This study, which was completed in November 1985, demonstrated that Québec carriers were generally able to compete effectively with U.S. carriers. It also established that in certain segments of the market, notably short-haul transportation between the outlying regions and Montréal or Québec City, Québec carriers realized certain scope economies which were not available to large U.S. carriers who were specializing in long-haul less-than-truckload movements.

The second study is a detailed examination of the Ontario-U.S. transborder trucking market and includes an extensive survey of both shippers and carriers in the United States and Canada. Although the final study will not likely be completed until the summer of 1987, some preliminary results are available. One of the study's more important findings is that 80 percent of the Ontario-U.S. transborder market is short-haul (500 miles or less) and that this market is one in which Canadian carriers can effectively compete with their U.S. counterparts. The

study concludes that a viable Canadian presence in the transborder trucking market currently exists and will continue to exist after regulatory reform.

The results of both these studies were used in a submission of the Director to the Commons Standing Committee on Transport which was reviewing proposed legislation designed to introduce economic regulatory reform in the transportation industry. This submission is discussed in greater detail in item (24).

CHAPTER VII

MARKETING PRACTICES BRANCH

1. Activities

The Marketing Practices Branch deals with complaints and other information from a broad variety of sources relating to violations of the misleading advertising and deceptive marketing practices provisions of the Act. These provisions play a significant role within the overall framework of competition policy in ensuring that the market mechanism operates effectively and that consumers are protected from deceptive practices. It was with this purpose in mind that the original misleading advertising provisions were included in the Act in 1960 and 1969 and that the scope of these provisions was expanded by the amendments to the Act that came into force on January 1, 1976.

The misleading advertising and deceptive marketing practices provisions are contained in sections 36 to 37.3 and apply to all persons promoting the supply or use of a product or promoting any business interest. The responsibilities of the Branch are therefore not restricted to any particular industry or type of distribution. Although the legislation in general relates to all representations made to the public and to specified marketing practices, some provisions are restricted solely to representations in the form of advertisements.

Since the number of complaints is large and the staff resources available to investigate them are limited, it is necessary to concentrate on those cases most likely to bring about an overall improvement in the quality of market information directed to the public, thereby contributing to the objectives of the legislation. The factors considered in assessing the priority of complaints are the degree of coverage of the representation, its impact on the public and the deterrent effect of a successful prosecution. A high priority is also given to cases that will afford a court the opportunity of establishing new principles or clarifying the law.

The Branch continues to operate on a decentralized basis with investigating officers stationed in twelve offices across Canada. Regional managers, who are located in six of these offices, also maintain the necessary liaison with provincial authorities responsible for consumer protection and trade practices matters. (A complete list of field offices can be found in Appendix VII.)

2. Proceedings

Prosecutions under sections 36 to 37.2 completed during the year are listed in Appendix II showing the products involved, the persons charged, the location of the offence and details of the disposition. Summaries of cases in which convictions are registered appear quarterly in the *Misleading Advertising Bulletin*, and appeals in such cases are also noted. Prosecutions that are not completed are listed in Appendix IV.

(1) *Operations under Sections 36 to 37.2 of the Act*

The following table shows operations under the present misleading advertising and deceptive marketing practices provisions, beginning with 1982-83. Operations before that time are to be found in previous reports.

OPERATIONS UNDER MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS

Part I — Inquiries and Investigations

		1982-83	1983-84	1984-85	1985-86	1986-87
(i)	Total complaints received	11 357	11 054	10 632	10 668	12 382
(ii)	Number of files opened	9 875	10 091	9 816	9 809	11 514
(iii)	Number of complete investigations	2 457•	2 068•	2 145	2 151	2 188
(iv)	Referrals to Attorney General under section 15:					
	—section 36(1)(a)	102	113	79	121	84
	(1)(b)	25	19	13	8	10
	(1)(c)	—	1	1	—	—
	(1)(d)	28	24	30	24	25
	36.1	—	2	1	—	—
	36.2	—	1	—	—	—
	36.3	1	7	3	2	18
	36.4	—	—	—	—	1
	37	4	2	4	8	5
	37.1	34	5	4	6	3
	37.2	5	7	1	6	5
(v)	Formal applications for inquiries	1	—	1	—	—
(vi)	Cases formally discontinued	3	—	4	—	—
(vii)	Cases referred to Attorney General and closed on his recommendation:					
	—section 36(1)(a)	5	11	5	13	7
	(1)(b)	—	—	4	5	—
	(1)(c)	—	—	—	—	—
	(1)(d)	1	1	1	—	1
	36.3	—	1	—	1	1
	37.1	—	—	—	—	1

Part II — Prosecutions

		1982-83	1983-84	1984-85	1985-86	1986-87
(i)	Number of cases before the courts at beginning of year (not including appeals)					
	—section 36(1)(a)	75	67•	62	52	74
	(1)(b)	10	17	19	14	10
	(1)(c)	1	1	—	—	1
	(1)(d)	11	16•	11	13	11
	36.1	—	1	2	2	—
	36.2	2	2	1	—	—
	36.3	—	—	3	3	1
	36.4	—	—	—	—	—
	37	5	3	2	1	4
	37.1	40	42•	15	—	3
	37.2	—	—	3	—	5
(ii)	Cases under appeal at beginning of year					
	—section 36(1)(a)	11	12•	17	14	8
	(1)(b)	—	3	5	2	1
	(1)(c)	—	—	—	—	—
	(1)(d)	1	1	1	1	1
	36.1	—	—	—	—	—
	36.2	—	—	—	—	—
	36.3	1	1	2	3	3
	36.4	—	—	—	—	—
	37	1	1	1	1	1
	37.1	1	2	5	1	—
	37.2	1	—	—	—	—
(iii)	Proceedings commenced during year					
	—section 36(1)(a)	93•	97	78	108	81
	(1)(b)	22	21	13	8	10
	(1)(c)	1	1	—	2	—
	(1)(d)	25	21	40•	21	26
	36.1	2	1	4•	—	—
	36.2	—	1	—	—	—
	36.3	—	5	4	—	4
	36.4	—	—	—	—	—
	37	1	2	5	7	9
	37.1	33	5	1	6	7
	37.2	1	9	3	6	6

Part II — Prosecutions—(Continued)

	1982-83	1983-84	1984-85	1985-86	1986-87
(iv) Completed cases convictions:	76	73	69	73	73
—section 36(1)(a)	8	10	12	8	9
(1)(b)	—1	—	1	1	
(1)(c)	10	16	23	17	17
(1)(d)	—	—	3	—	—
36.1	—	2	1	—	—
36.2	—	—	1	1	1
36.3	—	—	—	—	—
36.4	1	3	3	4	6
37	24	28	19	4	3
37.1	2	6	5	1	5
37.2					
non-convictions**:	26	24	22	19	19
—section 36(1)(a)	4	7	9	5	3
(1)(b)	1	1	—	—	—
(1)(c)	9	10	15	6	7
(1)(d)	1	—	1	2	—
36.1	—	—	—	—	—
36.2	—	1	2	1	3
36.3	—	—	—	—	—
36.4	2	—	3	—	2
37	5	1	1	—	5
37.1	—	—	1	—	—
37.2					
(v) Cases under appeal at end of year:	12*	17	14	8	13
—section 36(1)(a)	3	5	2	1	1
(1)(b)	—	—	—	—	—
(1)(c)	1	1	1	1	1
(1)(d)	—	—	—	—	—
36.1	—	—	—	—	—
36.2	1	2	3	3	1
36.3	—	—	—	—	—
36.4	1	1*	1	1	1
37	2	5	1	—	—
37.1	—	—	—	—	—
37.2					
(vi) Cases before the courts at end of year (not including appeals):	67*	62	52	74	57
—section 36(1)(a)	17	19	14	10	7
(1)(b)	1	—	—	1	—
(1)(c)	16*	11	13*	11	13
(1)(d)	1	2	2*	—	—
36.1	2	1	—	—	—
36.2	—	3	3	1	3
36.3	—	—	—	—	—
36.4	3	2	1	4	6
37	42*	15	—	3	3
37.1	—	3	—	5	6
37.2					

* Preliminary figures revised.

** Including conditional and absolute discharges, stays of proceedings, etc.

(2) *Prosecutions selected*

(a) Carrole D. Yates, Thomas G. Yates, and 266104 Alberta Ltd., carrying on business as Office Supplies International — Photocopy suppliers

C. Yates, T. Yates and 266104 Alberta Ltd. were charged on February 11, 1986 with having made false or misleading representations and misleading price representations in promoting the sale of photocopy supplies contrary to paragraphs 36(1)(a) and (d) respectively. On October 3, 1986, an additional charge under paragraph 36(1)(a) was laid against C. Yates and the corporate accused.

On December 1, 1986, the corporate accused pleaded guilty to seven charges under paragraph 36(1)(a) and two charges under paragraph 36(1)(d), for a total fine of $90 000. The charges against the individual accused were stayed. (For statistical purposes this case is recorded under paragraphs 36(1)(a) and (d).)

(b) Chrysler Canada Ltd.— Chrysler Canada Ltée, et al. — Automobiles

Chrysler Canada Ltd.—Chrysler Canada Ltée and twenty-three Chrysler dealers were charged on October 3, 1985 with making a false or misleading representation in promoting the sale of 1984 Chrysler K-cars, failing to supply an advertised product in reasonable quantities and supplying a product at a price higher than its advertised price contrary to paragraph 36(1)(a), subsection 37(2) and section 37.1, respectively.

On June 2, 1986, all the accused except Chrysler Canada Ltd—Chrysler Canada Ltée and Paul Willison Limited pleaded guilty to one charge under subsection 37(2). They were convicted and fined $6 000 each, for a total fine of $132 000. On the same date, the remaining charges under paragraph 36(1)(a) and section 37.2 against these twenty-two accused and the charges under subsection 37(2) and section 37.1 against Chrysler Canada Ltd.— Chrysler Canada Ltée were withdrawn. On September 24, 1986, Paul Willison pleaded not guilty but was convicted of one charge under paragraph 36(1)(a) and fined $6 000. The remaining charges under subsection 37(2) and section 37.1 against Paul Willison Limited were dismissed. The conviction against Paul Willison Limited is under appeal. The charge under paragraph 36(1)(a) against Chrysler Canada Ltd.—Chrysler Canada Ltée remains outstanding. (For statistical purposes this case is reported under paragraph 36(1)(a), subsection 37(2) and section 37.1.)

3. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 20(2) of the Act

There were no discontinued inquiries during the year.

4. Other Matters

(1) *Program of Compliance*

The staff of the Branch provided 343 written advisory opinions to firms that had requested review of proposed promotional material under the Director's Program of Compliance. A majority of compliance opinions relate to proposed promotional contests. In addition, a large number of informal discussions (approximately 938) were held with individual businesspersons who wished clarification of the possible application of the misleading advertising and deceptive marketing practices provisions of the Act. The Branch continued its effort to inform small businesses of the availability of the Program of Compliance.

(2) *Misleading Advertising Bulletin*

During the year the Branch's quarterly publication, the *Misleading Advertising Bulletin* contained summaries of concluded prosecutions that resulted in convictions under the misleading advertising and deceptive marketing practices provisions of the Act, statements of the Director's position in relation to various issues and summaries of some compliance opinions given during the quarter. Bulletins published during the fiscal year featured articles on advertising by Crown corporations, continuous sales, interest-free financing, schemes that take advantage of businesses, grey marketing, counterfeit goods and retailers' advertising guidelines. Copies of recent issues of the *Misleading Advertising Bulletin* are available from the Communications Branch of the Department.

(3) *Enquiries, Other Complaints and Media Contacts*

In addition to the services provided under the Program of Compliance, the Branch undertakes other non-enforcement activities designed to achieve a wide dissemination of Branch

policies and general information on the misleading advertising and deceptive marketing practices provisions. During the year, the Branch responded to 21 051 enquiries for information from the public and from the business community; individual staff members responded to 277 requests for interviews and information from the media; and 161 educational seminars were given before various business-interest and academic groups. As well, the Branch received 668 complaints that were subsequently referred to other authorities.

CHAPTER VIII

Economic Analysis and Policy Evaluation Branch

1. Activities

The Economic Analysis and Policy Evaluation Branch provides analytical and policy evaluation support for the Director and the Bureau of Competition Policy. In recent years, the Branch has been increasingly involved in interdepartmental policy work in areas that interface with the Act. In addition, the Branch represents the Director in international forums, including multilateral policy discussions and bilateral antitrust relations, especially with the United States.

The Branch provides support to the Bureau in relation to the enforcement of the Act, both by participating in enforcement policy exercises and by providing assistance in individual cases. Furthermore, the Branch prepares submissions by the Director to regulatory boards and tribunals, pursuant to sections 97 and 98 of the Act. The Branch also conducts policy-related applied industrial organization studies, both internally and under external contract, to contribute to the understanding and maintenance of an efficient market system in Canada.

Finally, the Branch has a separate, ongoing staff function in relation to strategic planning in the Bureau. In this capacity, it assists the Bureau Management Committee with the preparation of the annual Strategic Plan as well as related departmental planning requirements.

2. Policy Evaluation and Development

(1) *Input to the Bilateral Trade Negotiating Team Regarding Competition Policy-Related Matters*

A major activity of the Branch during 1986-87 was its involvement in providing input to the Trade Negotiations Office (TNO) regarding the treatment of various competition policy-related matters in the Canada-U.S. trade negotiations. An important focus of this work was on the need and scope for harmonization of Canadian and U.S. antitrust policies, jurisdiction and procedures. In this regard, the Branch sponsored a study of Canada-U.S. antitrust jurisdictional issues and co-sponsored with the TNO a comparative study of Canadian and U.S. antitrust laws. In general, these studies found that while substantive Canadian and U.S. antitrust policies reflect common economic objectives and are largely compatible, substantial differences exist with regard to jurisdiction and procedures. For example, private antitrust litigation is much more common in the U.S. than in Canada, and treble damages are available under the U.S. antitrust laws.

In addition to the above studies, the Branch contributed to an analysis of Canadian and U.S. contingency trade law and the development of alternatives to the application of such law in the context of a bilateral free trade area. The Branch prepared a study which examined the potential competitive benefits of reliance on antitrust provisions relating to price discrimination and predatory pricing as an alternative to existing anti-dumping laws. Preliminary discussions were also undertaken with the Trade Negotiation Office to examine the technical questions that would have to be addressed if U.S. and Canadian domestic competition laws were to govern transborder pricing practices.

During the year a study was also commissioned by the Branch to estimate the competitive effect of trade liberalization with the U.S. and to contribute to the assessment of the welfare gains which Canada could achieve as a result. More specifically, the study which was completed in January 1987 attempted to provide estimates of the likely price reaction of Canadian firms to trade liberalization in various industries. The results have been incorporated in a gen-

eral equilibrium trade model developed by the Department of Finance in close cooperation with the Trade Negotiations Office and have been used to simulate the welfare gains to be achieved under various alternative trade liberalization scenarios.

The study's main finding was that the loss of tariff protection will only affect prices materially in industries in which intra-industry trade is significant (i.e., industries for which both exports and imports represent an important share of total shipments). Overall, the fall in prices from loss of tariff protection is estimated to be around 3 percent.

Finally, the Branch also assisted the Trade Negotiations Office in the assessment of issues pertaining to the treatment of intellectual property rights in the bilateral negotiations. The Branch also undertook an in-depth study of the treatment of intellectual property licensing practices under the two countries' antitrust laws. In general, the study found that the exercise of intellectual property rights through licensing has traditionally been constrained by the antitrust laws to a greater extent in the U.S. than in Canada. This reflects not only differences in substance, but also in procedural matters such as the role of private antitrust litigation in the U.S. and the much greater scope in that country for use of alleged antitrust violations as a defence to intellectual property infringement suits. Recent initiatives by the U.S. Department of Justice to relax traditional antitrust constraints on licensing practices are bringing U.S. policies in this area closer to the treatment of licensing practices under Canadian competition law.

(2) *Legislation to Replace the Shipping Conferences Exemption Act, 1979*

An important activity of the Branch in 1986-87 was its ongoing participation in the interdepartmental development of legislation to replace the Shipping Conferences Exemption Act, 1979 (SCEA). This legislation exempts certain practices of ocean liner freight shipping conferences from provisions of the Competition Act. An interdepartmental review of the legislation, chaired by Transport Canada, was initiated in response to a sunset clause in the SCEA, pursuant to which it was originally scheduled to expire on March 31, 1984. The SCEA was subsequently extended by Order in Council until December 31, 1987 pending the enactment of new legislation. The Branch participated extensively in the interdepartmental review and development of legislation to replace the SCEA, the details of which are provided in the 1985-86 Annual Report at page 90.

During the spring of 1986, the Branch was involved with Transport Canada and the Department of Justice in the drafting of Bill C-122, a Bill to replace the SCEA. Bill C-122 incorporated major reforms in the legislative framework for operation of shipping conferences, which included (a) establishment of a statutory right of independent action for conference members on all published rate and service items, (b) provision for the use of confidential service contracts between individual exporters and individual conference members, (c) deletion of the existing exemption for collective agreements between conference and non-conference carriers, (d) prohibition of collective negotiations between conference members and inland carriers, and (e) clarification that predatory pricing by conference members remains subject to the Competition Act. In addition, the Bill provided for a new procedure for review of conference agreements and practices by the Canadian Transport Commission and designated the Director of Investigation and Research as an interested person with authority to apply for such review.

The reforms contained in the Bill were based on proposals put forward in the Minister of Transport's discussion paper on national transportation policy, *Freedom to Move* (May 1985). They also drew on aspects of the U.S. experience under the Shipping Act of 1984 which establishes the framework for operation of conferences in that country's maritime trade.

Bill C-122 was introduced in the House of Commons in June 1986 but died on the order paper when Parliament was prorogued. In the fall of 1986, the Branch assisted with the preparation of a new Bill based on the provisions of Bill C-122. The new legislation, Bill C-21, was introduced in the House of Commons in November 1986. It received second reading in March 1987 and has been referred for study by a Legislative Committee of the House of Commons. The Bill has also been referred for a separate subject matter study by the Senate Standing Committee on Transport and Communications. Throughout this period, the Branch has been

active in monitoring the progress of Bill C-21 in Parliament and in providing consultation to Transport Canada regarding competition policy-related aspects of the Bill.

(3) *Revisions to Canadian Copyright Act*

The Branch continued to participate on behalf of the Bureau in the ongoing interdepartmental development of revisions to the Canadian Copyright Act. This work was undertaken on the basis of the recommendations contained in the October 1985 Report of the House of Commons' Subcommittee on Revision of Copyright and the government's response to the Subcommittee Report which was tabled in the House of Commons in January 1986. Details of previous involvement in copyright policy development are provided in the 1985-86 Annual Report at page 92.

(4) *Interdepartmental Committee on International Shipping Matters*

The Branch continued to represent the department in the work of the Interdepartmental Committee on International Shipping Matters. This standing Committee, chaired by Transport Canada, is responsible for coordinating the Canadian position in all shipping-related international discussions as well as coordinating the development of national shipping policies. In 1986-87 the Committee was involved in extensive deliberations regarding the OECD Maritime Transport Committee Shipping Policy Discussions. These discussions, which were initiated in the early 1980's, were intended to lead to the adoption of a common set of principles regarding shipping policies for OECD member countries.

In February 1987 a Recommendation Concerning Common Principles of Shipping Policy for Member Countries was approved by the OECD Council. The Recommendation dealt with matters such as government intervention in shipping markets and the application of competition policy to shipping conferences. In general, the OECD Council recommendation supported the legitimate role of governments in maintaining competition and preventing the abuse of market power by commercial parties in shipping markets.

(5) *Financial Markets*

The Branch collaborated with the Services Branch in the ongoing review of regulation and efficiency in financial markets at the federal and provincial levels of government. The Branch assisted in particular with an appearance by the Director before the Ontario Legislative Committee on Finance and Economic Affairs. (See also Chapter V.)

(6) *Aggregate Concentration and Conglomeration*

The Branch collaborated with CCAC's Bureau of Policy Coordination in the analysis of aggregate concentration and conglomeration in the Canadian economy. In addition, a member of the Branch participated in the organization of a conference sponsored by the Institute for Research on Public Policy on Mergers, Corporate Concentration and Corporate Power. The Director made a presentation to the conference on the merger provisions of the Competition Act and his perspective on the issues of aggregate concentration and conglomeration.

3. International Relations

The Branch is responsible for the coordination of the Bureau's bilateral relations with foreign antitrust agencies. It also participates on behalf of the Bureau in the work of multilateral antitrust-related organizations such as the OECD Committee on Restrictive Business Practices and the UNCTAD Intergovernmental Group of Experts on Restrictive Business Practices.

(1) *Bilateral Relations*

The Bureau's bilateral relations are carried out generally within the framework of the 1979 OECD Council Recommendation, revised in 1986, concerning cooperation between member countries on restrictive business practices matters. Consultations may be held with

any of Canada's OECD partners on any restrictive business practices matter where the action of one member may affect the important national interests of another member. This is an ongoing activity which involves the notification of antitrust enforcement activities that may transcend national jurisdictions, exchanges of information and cooperation with foreign antitrust agencies.

The bulk of Canada's bilateral antitrust relations involves cooperation with the United States antitrust agencies. While influenced by the OECD Recommendation, this particular bilateral relationship is more specifically governed by the provisions of the March 1984 Memorandum of Understanding (MOU) as to Notification, Consultation and Cooperation with respect to the Application of National Antitrust Laws (the full text of which was reproduced as Appendix IX to the 1984 Annual Report).

During the year, matters of notification and consultation regarding antitrust activities of one jurisdiction that may affect the national interests of the other led the United States to officially notify Canada in forty-two instances. The Bureau gave three official notifications to the U.S. authorities during the same period. Formal consultations, prescribed by the MOU when a diverging national interest arises, took place for the first time in the matter of the acquisition by a U.S. firm of the farm machinery operations of Versatile Corporation, a Canadian company. This transaction was eventually allowed to proceed in a manner consistent with the policy objectives of the two governments.

In addition to the above, the Bureau initiated several informal discussions and exchanges of information with the U.S. antitrust authorities in matters related to enforcement strategies and policies. In November, the Bureau welcomed in Ottawa for two days six officials of the U.S. Department of Justice and the Federal Trade Commission who conducted seminars on merger analysis and related enforcement policies. These seminars, were part of the activities related to the implementation of the new Competition Act.

During the year, an executive interchange initiative was arranged between the Bureau and the Australian Trade Practices Commission. In February, a senior official of the Australian Trade Practices Commission joined the Bureau for a one year assignment, while in May 1987, one of the Bureau's Branch Directors was seconded to the Australian Trade Practices Commission for a similar length of time. Also an official of the New Zealand Commerce Commission completed a three week assignment with the Bureau.

Bilateral relations with France were also active during the reporting period. In June 1986 Bureau staff were invited to a meeting in Paris attended by French antitrust authorities including the Chairman of the Commission on Competition Reform. This Commission was established by the Chirac government to formulate a new competition legislation for France.

As a result of the work of the Reform Commission, a new French Competition Law was introduced in November 1986. Mr. Georges Chavannes, who is the Minister responsible for the small business portfolio in the French government, and who was involved in the formulation of the new law, met with the Honourable Harvie Andre in November 1986 during a visit to Canada to brief him on the new French law. Further meetings with French antitrust authorities are expected in the near future.

(2) *Multilateral Relations*

(a) *The OECD Restrictive Business Practices Committee*

The Branch has continued to be active in the work of the OECD Committee of Experts on Restrictive Business Practices (RBP). Two meetings of the OECD RBP Committee were held during the reporting period in June 1986 and February 1987.

At the June meeting, the Director presented Canada's annual report to the Committee which focussed on the highlights of the new Competition Act. In addition to country reports and other customary activities, a special session was held on June 26 to mark the 25th Anniversary of the Committee. The general theme of the session was "25 years of competition policy: achievements and challenges". During the session, short statements on past and future

activities as well as reflections on current policy issues were made by several members of the Committee, including the Branch Director who spoke on the competition policy intellectual property interface. The speeches have been circulated by the OECD in the general distribution series.

The Bureau of the Committee was renewed at the February 1987 meeting of the Committee. This provided an opportunity for the election of the Director as vice-chairman of the Committee. Another important development at the meeting was the decision to create a new working party (WP4) on competition policy and intellectual property. The mandate of this Working Party, to be chaired by the United States, is

a) to study and report to the Committee on the relationship between competition law and policy issues related to intellectual property rights, in particular patents, know how and related licensing agreements, taking into account work on intellectual property rights in other parts of the Organisation and other international fora;

b) in the light of the findings of the study, to review the 1973 Recommendation on patents and licences.

The working parties of the Committee were also very active and held several meetings during the reporting period.

(b) *Working Party One on Competition and Trade*

Working Party One devoted most of its efforts to the finalization of its report on the experience of some member countries with the application of voluntary export restraints in the automobile sector. The country studies contained in the report were undertaken on the basis of an indicative checklist of pertinent factors to be taken into account when considering the effect of particular trade measures on the competitive environment (This checklist, developed by the Working Party, was reproduced along with a commentary in Appendix X to the 1985 Report. The result of the Canadian contribution to the report was discussed in last year's Annual Report at p. 95-96). The Committee now intends to publish the Report so as to provide a concrete example of how the checklist could be usefully applied to a particular sector.

As a follow-up to a previous Canadian contribution sponsored by the Bureau on the comparison of the injury standards used in international trade law (contingency protection) and competition laws (see last year's Report at p.96 for more details on this study), Working Party One has now undertaken a new study on predatory pricing. This study will provide a better understanding of how predatory pricing is being dealt within member countries. It will also represent a useful input to the consideration of pricing practices under trade laws (particularly anti-dumping). A first draft of the Canadian contribution was prepared by the Branch during the reporting period.

(c) *Working Party Two on Competition Policy and Deregulation/Privatization*

Three meetings of Working Party Two were held during the reporting period. These meetings provided an opportunity for an exchange of experience on deregulation and privatization. In this regard, Branch personnel prepared and submitted four papers dealing with the Canadian experience in the transportation (airline, railway, trucking) and telecommunications sectors. The Branch also prepared a comprehensive conceptual paper proposing an analytical framework for the consideration of deregulation and privatization issues. This paper examines the various rationales which have been advanced to justify government intervention (market failures), assesses the various forms of intervention adopted in the past (notably regulation and public ownership) and makes suggestions on how various policy instruments should be applied to market failure problems.

(d) *Working Party Nine on Mergers, Concentration and Competition Policy*

An important report prepared by Working Party Nine on *Competition Policy and Joint Ventures* was published in 1986. Of particular interest in this report is a review of significant antitrust cases involving joint ventures which have arisen within member countries in recent years. The report also offers suggestions for the review of joint ventures by competition authorities.

Following the publication of this report, the Working Party also undertook during the reporting period the preparation of a new study on certain aspects of international mergers. This study will emphasize the problems faced by competition authorities in the examination of merger activities which cut across international boundaries. Particularly important in this respect will be issues related to market definition and jurisdiction. A Canadian contribution prepared by the Branch during the reporting period was submitted in the fall of 1986. The study provides an assessment of the factors which contribute to international mergers activities, examines the Canadian experience on the basis of information collected by Investment Canada and reviews some recent cases of particular significance.

(e) *OECD Council Recommendations on Antitrust Matters*

Two important recommendations on antitrust matters were also made during the reporting period by the OECD Council on the basis of previous work of the RBP Committee. On May 21, 1986, the Council adopted a recommendation which supersedes its Recommendation of 25th September 1979 concerning cooperation between member countries on Restrictive Business Practices Affecting International Trade [C(79)154(Final)].

Like its predecessor, the 1986 Recommendation calls for closer cooperation between member countries on antitrust matters in the form of notification, exchange of information, coordination of action, consultation and conciliation. An important new element, however, is a set of guiding principles designed to clarify the procedures laid down in the Recommendation and thereby strengthen cooperation and minimize conflicts in the enforcement of competition laws. A full text of the 1986 Recommendation is provided in Appendix VIII.

In October 1986 the OECD Council adopted another Recommendation for cooperation between member countries in areas of potential conflict between competition and trade policies. The Recommendation establishes policy principles to strengthen competition in national and international markets and proposes procedural arrangements to avoid or minimize conflicts between trade and competition policies. As such, this new Recommendation provides a useful complement to the Recommendation approved in May. A full text of this Recommendation is provided in Appendix IX.

(f) *UNCTAD Intergovernmental Group of Experts on RBP*

Consistent with the Canadian commitment to multilateral institutions and cooperative endeavours, Canada, through the Director's office, participates in the UNCTAD Intergovernmental Group of Experts forum which focusses on promoting a reasonably consistent international competition policy environment. Past work has involved conducting studies on the effects of particular restrictive business practices on international trade and development, and on alternate approaches to the control of such practices. During the year efforts continued to develop a model restrictive business practices law as well as to compile a handbook on individual national laws in this area.

4. Competition Act Enforcement Support

Staff members of the Branch continued to provide support and consultation regarding individual enforcement matters under the Competition Act upon request. Assistance was provided in specific enforcement operations relating to the computer industry, the cigarette industry, the airline industry and the exclusive rights pertaining to copyrighted materials.

5. Strategic Planning in the Bureau

The Branch continued to perform the staff function for the Bureau Management Committee in the development of the annual Strategic Plan. The Strategic Plan is a Bureau-wide

planning document which is intended to assist in the allocation of managerial and staff resources and to facilitate effective response to developments in the Bureau's external environment. The Branch performed the staff work involved in preparation of the various elements of the Plan, including the environmental assessment, review of the Bureau's mission and objectives, identification of strategic issues and establishment of priorities. The Branch also assisted with the completion of numerous departmental planning requirements such as the annual Work Plan, Departmental Corporate Plan and Activity Priority Document.

6. Policy-related Applied Industrial Organization Studies

In addition to the studies noted under the above headings, the Branch undertook several policy-related research studies and papers on industrial organization and competition policy in Canada. The studies listed below were completed during the year.

(1) *Persistence of Industrial Profits*

A paper on the persistence of large firm profits over time was prepared by a Branch staff member in collaboration with an academic as input to an international collaborative project involving research teams from France, West Germany, the U.K., Japan, the U.S.A., Belgium and other countries. This project has been undertaken to examine alternative hypotheses regarding the persistence of profits, the existence of structural impediments to competition and superior performance by firms.

(2) *Recent Developments in Canadian and U.S. Merger Policy*

Staff members of the Branch prepared a paper on recent developments in Canadian and U.S. Merger Policy that was published in the *Canadian Competition Policy Record*. The paper provided a discussion of the merger provisions of the Competition Act in light of recent developments in economic thought and the evolution of U.S. merger policy from 1968 to 1986.

(3) *Review Article on Predatory Pricing in Canada*

Staff members of the Branch prepared a review of an article on predatory pricing by two academic authors which appeared in the *Canadian Bar Review*. The review, which was published in the *Canadian Competition Policy Record*, took issue with the authors' analysis regarding the need for the current provisions of the Competition Act relating to predatory pricing.

(4) *Non-tariff Barriers in Canada-U.S. Trade*

As part of its work on Canada-U.S. trade issues, the Branch undertook a case study on non-tariff barriers to Canada-U.S. trade in the steel industry. The study examines specific examples of the application of contingency trade remedies such as anti-dumping, countervailing duties and safeguard measures in light of the structure of the Canadian steel industry. The study highlights the extensive interdependence of the Canadian and U.S. steel markets and the impact of individual non-tariff barriers from the competition policy point of view.

(5) *Competition Policy with Freer Trade*

A theoretical study of the role of competition policy in an economy moving toward free trade was sponsored by the Branch. The author points out that a good case can be made for the retention of a vigourously enforced competition policy that will serve to make and keep markets competitive so that consumers will realize the benefits of free trade.

APPENDIX I

Reports by Restricted Trade Practices Commission and Action Taken Thereon*

Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which Recommendations Applied**	Action Taken on Recommendations and Results***
Competition in the Canadian Petroleum Industry	General Inquiry under section 47 of the (former) Combines Investigation Act	May 16, 1986.	The recommendations and conclusions of the RTPC are set out in Chapter IV of this report.	Petro-Canada and other petroleum industry companies	Many of the Commission's recommendations, directly or indirectly, related to amendments to the Competition Act. When the report was received by the Government in May 1986, C-91 was before Parliament. Further amendments were introduced which addressed some of the issues identified by the Commission while others were already fully or partially incorporated. Following the public release of the Report, a number of interested parties including associations representing branded dealers and independent resellers, certain provincial governments and some oil companies communicated their views on the Report and its recommendations to the Minister. In December 1986, the Minister asked the Director to carry out consultations on his behalf with the oil companies concerning the specific recommendations that the Commission directed at their activities and to report back to him. These consultations were in progress at the end of the fiscal year.

* An Appendix in this form was first included in the Report of the Director of Investigation and Research for the year ended March 31, 1961, and contained all reports received from the Restrictive Trade Practices Commission since July 1, 1957.

** In many cases the reports do not specifically name persons or companies to which the recommendations apply. Unless, therefore, the recommendations in the report are stated specifically to apply to named persons or companies, nothing is shown under this heading.

*** The reports of the Restrictive Trade Practices Commission do not contain recommendations in respect of prosecution proceedings, apart from tariff action. Any action under the Act arising out of alleged contraventions of the anticombines legislation can be taken only through the courts. The comments under this heading, therefore, set out not only the consultative activities undertaken by the Director but also, where applicable, any court proceedings contemplated or commenced and the outcome of such proceedings.

APPENDIX II

Proceedings Completed in Cases Referred Direct to the Attorney General of Canada

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Gasoline)	Sunoco Inc.	An Information containing one charge under paragraph 38(1)(a) and one under paragraph 38(1)(b) was laid at Toronto, Ontario, on May 24, 1985. The accused was convicted of the charge under paragraph 38(1)(a) on June 24, 1986, and was subsequently fined $200 000. The remaining charge was withdrawn.
Price maintenance (Ski equipment)	Salomon Sports Canada Ltd./Ltée	An Information containing five counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b) was laid at Montréal, Québec, on February 16, 1983. The accused was subsequently ordered to stand trial on all counts but one under 38(1)(a) following a preliminary inquiry. On March 19, 1984, the accused was convicted of four charges under paragraph 38(1)(a) and three under paragraph 38(1)(b), and was acquitted on the remaining charge. On May 17, 1984, a fine of $100 000 and an Order of Prohibition were imposed. The accused appealed the conviction in respect of three charges and was acquitted of these three charges on April 15, 1986. The fine imposed was reduced to $57 142.85.
Conspiracy (Auto body shops)	Dave Spear Limited, Climenhaga's Garage Ltd., Don Dean Chevrolet Oldsmobile Limited, Erie Collision Limited, Ted Lloyd Pontiac-Buick Ltd., Jon Beck carrying on business as Dufferin Motors, William Fickel carrying on business as Fickel's Body Shop, Sergio Rubesa carrying on business as Garrison Auto Body, Gerald Doan carrying on business as Jerry's Auto Body, Norman Page carrying on business as Page Auto Body, Orin Page carrying on business as Speedy Auto Body	An Information containing one charge under paragraph 32(1)(c) was laid at Ottawa, Ontario, on May 17, 1984. On August 23, 1985, Ted Lloyd Pontiac-Buick Ltd. was discharged after a preliminary inquiry. On April 30, 1986, the remaining accused were acquitted.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Jeans)	Blue Bell Canada Inc., Michael Corson, Mel Kastner and Michael Gravenor Agency Ltd.	An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto, Ontario, on March 27, 1985. Blue Bell Canada Inc. and M. Corson were jointly charged on both counts while M. Kastner was jointly charged on the count under paragraph 38(1)(a) and Michael Gravenor Agency Ltd. was jointly charged on the count under paragraph 38(1)(b). On October 21, 1985, M. Corson was discharged following a preliminary inquiry. On May 26, 1986, Blue Bell Canada Inc. pleaded guilty and was convicted and fined $15 000 on the count under paragraph 38(1)(a) and $25 000 on the count under paragraph 38(1)(b). The charges against the remaining accused were withdrawn.
Price maintenance (Televisions, stereos and video products)	Zenith Radio Canada Ltd.	An Information containing four counts under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto, Ontario, on July 4, 1985. On May 26, 1986, the accused pleaded guilty to one count under paragraph 38(1)(a) and was convicted and fined $40 000. The remaining counts were withdrawn.
Price discrimination (Meters and meter parts)	Neptune Meters, Limited	An Information containing one count under paragraph 34(1)(a) was laid at Edmonton, Alberta, on December 23, 1981. The Information was relaid at Toronto on October 5, 1982. On June 2, 1986, the accused pleaded guilty and was fined $50 000.
Price maintenance (Carpets)	Bigelow Canada Limited	An Information containing one count under paragraph 38(1)(b) was laid at Québec City, Québec, on August 12, 1982. On June 8, 1984, the accused was acquitted. A subsequent appeal by the Crown was dismissed on July 2, 1986.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Leather clothing)	Drospo Inc.	An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at St-Joseph de Beauce, Québec, on April 24, 1984 against Drospo Inc. On February 4, 1986 the accused was convicted on the count under paragraph 38(1)(a) and acquitted on the count under paragraph 38(1)(b). On March 4, 1986, the company was fined $2 000. An application by the accused for leave to appeal the conviction and extend the time allowed for making the appeal was rejected on May 16, 1986, while an application by the Crown for leave to appeal the sentence was rejected on July 2, 1986.
Price maintenance (Women's wear)	Compagnie Manufacturière Lori-Ann Inc., and Les Entreprises DDN Inc.	An Information containing one count under paragraph 38(1)(b) was laid at Montréal, Québec, on June 20, 1984. On June 14, 1985, both accused were convicted, and on February 7, 1986, Les Entreprises DDN Inc. was fined $1 000. Compagnie Manufacturière Lori-Ann Inc. appealed the conviction, but later abandoned the appeal and was fined $7 500 on September 24, 1986.
Conspiracy (Driving Schools)	École de Conduite Lauzon Sherbrooke Ltée, André Houle, 2172-3572 Québec Inc. carrying on business as École de Conduite Asbestrie Enr., École de Conduite de l'Estrie Inc., and École de Conduite Vel Inc.	An Information containing one count under paragraph 32(1)(c) was laid at Sherbrooke, Québec, on December 12, 1985. On May 30, 1986, 2172-3572 Québec Inc, École de Conduite de l'Estrie Inc. and École de Conduite Vel Inc. pleaded guilty and were convicted and fined $1 000 each and made the subject of an Order of Prohibition. École de Conduite Lauzon Sherbrooke Ltée pleaded guilty and was convicted on October 21, 1986, and was fined $2 000 and made the subject of an Order of Prohibition on October 28, 1986.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Bid-rigging(Glass and glazing)	Coastal Glass & Aluminum Ltd., Central Glass Products Ltd., LOF Glass of Canada Ltd. formerly known as Bogardus, Wilson Limited, Zimmcor Company—La Compagnie Zimmcor, and PPG Industries Canada Ltd.—Industries PPG Canada Ltée	An Information containing four counts under section 32.2 was laid at Vancouver, British Columbia, on May 19, 1982. Following a preliminary inquiry the counts against PPG Industries Canada Ltd.—Industries PPG Canada Ltée and Zimmcor Company—La Compagnie Zimmcor were discharged. Coastal Glass & Aluminum Ltd. was found guilty of one charge and was convicted on December 19, 1984, and sentenced on January 24, 1985 to a fine of $85 000. This accused and the remaining accused were acquitted on three further charges. An appeal by the Crown against the acquittals was dismissed on May 15, 1986. An application for extension of time to secure leave to appeal to the Supreme Court of Canada was denied on October 28, 1986.
Price maintenance (Equestrian products)	Griffith Sadlery & Leather Limited	An Information containing two counts under paragraph 38(1)(b) was laid at Stratford, Ontario, on June 10, 1985. On August 29, 1986, the accused was acquitted on both counts.
Bid-rigging (Reprographic services)	Central Graphics Ltd., Hughes-Owens Limited —Hughes-Owens Limitée, and Hughes-Owens (Manitoba) 1985 Ltd.	An Information containing one count under section 32.2 was laid at Winnipeg, Manitoba on August 8, 1986, against Central Graphics Ltd. and Hughes-Owens Limited. A second Information containing one further charge against Central Graphics and Hughes-Owens (Manitoba) 1985 Ltée was laid on the same date. On November 5, 1986, the accused pleaded guilty and were convicted. Central Graphics Ltd. was fined a total of $60 000 on two charges, while Hughes-Owens Limited — Hughes-Owens Limitée and Hughes-Owens (Manitoba) 1985 Ltd. were fined $20 000 and $40 000 respectively on one charge. An Order of Prohibition was also imposed against the accused.
Price maintenance (Woodstoves)	Delco Fireplaces Ltd. and Eric Lewtas	An Information containing one count under paragraph 38(1)(b) was laid at Langley, British Columbia on May 27, 1986. On November 7, 1986, the accused were discharged at the preliminary inquiry.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Gasoline)	Kenneth Laird, Sundance Service Ltd., Brad Stevenot, Triple "A" Enterprises Ltd., Patrick Lutz, P & F Holdings Ltd., James Kerr, and Meadow Lake Consumers Cooperative Association	Three charges under paragraph 38(1)(a) and one charge under subsection 38(6) were laid at Meadow Lake, Saskatchewan on July 4, 1985. At the preliminary hearing on September 16, 1985, P. Lutz and P & F Holdings were discharged of the sole charge against them while K. Laird and Sundance Service Ltd. were discharged of the count under subsection 38(6). On December 16, 1986, a stay of proceedings was entered in respect of all of the charges.
Price maintenance (Stereo equipment)	Lenbrook Industries Ltd.	An Information containing two counts under paragraph 38(1)(a) was laid at Toronto, Ontario, on April 26, 1985. On January 15, 1987, the accused pleaded guilty to one count and was convicted and fined $25 000. The remaining count was withdrawn.
Price maintenance (Jeans)	Western Glove Works Limited and Lewis Choi Enterprises Ltd.	An Information containing one count under paragraph 38(1)(b) was laid at Charlottetown, Prince Edward Island, on August 16, 1983. On January 23, 1987, Western Glove Works Limited pleaded guilty and was convicted and fined $2 000. The charge against the remaining accused was withdrawn.
Promotional Allowances (Wooden furniture)	Roxton Furniture Limited	An Information containing two counts under subsection 35(2) was laid at Guelph, Ontario, on January 16, 1987. On February 4, 1987, the accused pleaded guilty and was convicted and fined $3 500 on each count, for a total fine of $7 000. An Order of Prohibition was also imposed.
Price maintenance (Wooden furniture)	Roxton Furniture Limited	An Information containing two counts under paragraph 38(1)(b) was laid at Guelph, Ontario, on January 16, 1987. On February 4, 1987, the accused pleaded guilty and was convicted and fined $12 500 on each count for a total fine of $25 000. An Order of Prohibition was also imposed.
Price maintenance (Tableware)	Villeroy & Boch Tableware Ltd.	An Information containing one count under paragraph 38)(1)(b) was laid at Edmonton, Alberta on March 18, 1986. On March 5, 1987, the accused was acquitted.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Electronic products)	Henry Galler Inc.	An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal, Québec, on February 25, 1986. Following a preliminary inquiry, the count under paragraph 38(1)(a) was discharged. On March 19, 1987, the accused pleaded guilty to the remaining charge and was convicted and fined $15 000.
Price maintenance (Sailboat accessories)	North Sailing Products Limited	An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto, Ontario, on July 15, 1985. On February 10, 1987, the accused was convicted on the count under paragraph 38(1)(a) and acquitted on the count under paragraph 38(1)(b). On March 30, 1987, the accused was fined $2 000.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Houses)	Canada Trust Realty Inc. (Edmonton, Alberta)	One charge was laid on July 29, 1985, under paragraph 36(1)(a). On April 2, 1986, a stay of proceedings was entered.
False or misleading representation in a material respect (Mattress sets)	No Frills Appliances and T.V. Limited (Toronto, Ontario)	Nine charges were laid on November 18, 1985, under paragraph 36(1)(a). On April 4, 1986, the accused pleaded guilty to one charge, and was convicted and fined $7 500. The remaining charges were withdrawn.
Misleading price representation (Television sets)	No Frills Appliances and T.V. Limited (Toronto, Ontario)	Nine charges were laid on November 18, 1985, under paragraph 36(1)(d). On April 4, 1986, the accused pleaded guilty to one charge and was convicted and fined $7 500. The remaining charges were withdrawn.
False or misleading representation in a material respect (Jewellery)	Joseph Pedneault, Jean Pedneault, Pierre Pedneault and André Desbiens, carrying on business as Bijouterie D'Escomptes R.P. Enr. (Chicoutimi, Québec)	Two charges were laid on April 15, 1985, under paragraph 36(1)(a). On April 10, 1986, Joseph Pedneault pleaded guilty and was convicted and fined $500 on each charge, for a total fine of $1 000. The charges against the remaining accused were withdrawn.
Misleading price representation (Jewellery)	Joseph Pedneault, Jean Pedneault, Pierre Pedneault and André Desbiens, carrying on business as Bijouterie D'Escomptes R.P. Enr. (Chicoutimi, Québec)	Three charges were laid on April 15, 1985, under paragraph 36(1)(d). On April 10, 1986, Joseph Pedneault pleaded guilty and was convicted and fined $850 on each charge, for a total fine of $2 550. The charges against the remaining accused were withdrawn.
Pyramid selling scheme (Automobile club)	Braden Caldwell, John Radu, James Thomson, Graham Maxmenko, Martin Seepersad, Melvin Woods, Wilbert Schweitzer and Kenneth LaChappelle (Port Coquitlam, British Columbia)	One charge was laid on September 12, 1984, against B. Caldwell, J. Radu and J. Thomson under section 36.3. On November 19, 1984, four additional charges were laid against B. Caldwell and two additional charges were laid against J. Radu, W. Schweitzer and K. LaChappelle. One charge was also laid against each of the remaining accused. On October 15, 1985, the charges against B. Caldwell, J. Radu, and J. Thomson were dismissed, while those against the remaining accused were stayed. An appeal by the Crown in respect of the charges against B. Caldwell and J. Thomson was dismissed on April 11, 1986.
False or misleading representation in a material respect (Water purifier)	Neo-Life Company of Canada Ltd. (Barrie, Vaughan, Mississauga, Toronto, Ontario)	Two charges were laid on October 25, 1985, under paragraph 36(1)(a). On April 14, 1986, the charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Water purifier)	Neo-Life Company of Canada Ltd. (Barrie, Vaughan, Mississauga, Toronto, Ontario)	Two charges were laid on October 25, 1985, under paragraph 36(1)(b). On April 14, 1986, the accused pleaded guilty and was convicted and fined $5 000 on each charge, for a total fine of $10 000.
False or misleading representation in a material respect (Diamond rings)	Walters Jewellers Limited (Hamilton, Ontario)	Seven charges were laid on August 26, 1985, under paragraph 36(1)(a). On April 14, 1986, the accused pleaded guilty to one charge and was convicted and fined $5 000. The remaining charges were withdrawn.
Misleading price representation (Diamond rings)	Walters Jewellers Limited (Hamilton, Ontario)	Seven charges were laid on August 26, 1985, under paragraph 36(1)(d). On April 14, 1986, the charges were withdrawn.
Non-availability (Automobiles)	David Everett and Dominion Vancouver Motors Limited, carrying on business as Dominion Pontiac Buick (Vancouver, British Columbia)	Four charges were laid on November 27, 1985, under subsection 37(2). On April 15, 1986, a stay of proceedings was entered.
False or misleading representation in a material respect (Canned goods)	Westfair Foods Ltd., carrying on business as Super Value (Winnipeg, Manitoba)	Two charges were laid on October 8, 1983, under paragraph 36(1)(a). The accused pleaded not guilty, but on June 17, 1985 was convicted on one charge and fined $750. The accused was acquitted of the other charge. Appeals by both the accused and the Crown were dismissed on April 16, 1986.
False or misleading representation in a material respect (Photographic services)	Winnipeg Photo Ltd., carrying on business as Amora Portrait Studios and Antony Marshall (Kingston, Ontario)	Three charges were laid on November 2, 1985, under paragraph 36(1)(a). On April 17, 1986 the accused were both convicted of two charges and fined $500 per charge, for a total fine of $2 000. The remaining charge was dismissed.
Representation without proper test (Water purifier)	Lee-Roy Enterprises Ltd., carrying on business as Yellowhead Mobile Homes and as Hard Water Solution (Yorkton, Saskatchewan)	Four charges were laid on September 26, 1985, under paragraph 36(1)(b). On April 23, 1986, the charges were dismissed.
Misleading price representation (Electrical and household appliances)	Les Entreprises Régis Roussel Inc., carrying on business as Belzile et Frères Enr. (Luceville, Mont-Joli, Québec)	Twenty charges were laid on November 8, 1985, under paragraph 36(1)(d). On April 28, 1986, the accused pleaded guilty to sixteen charges and was convicted and fined $500 on each charge, for a total fine of $8 000. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Refrigerators)	Les Entreprises Régis Roussel Inc., carrying on business as Belzile et Frères Enr. (Luceville, Mont-Joli, Québec)	One charge was laid on November 8, 1985, under section 37.1. On April 28, 1986, the charge was withdrawn.
Pyramid selling scheme (Discount card)	Agence de Promotion et de Courtage Tri-Action Inc., Jean-Pierre Boivin and Paul-André Boivin (Longueuil, Québec)	One charge was laid on June 6, 1983, under section 36.3. The accused were convicted on April 27, 1984, and on June 28, 1984 the corporate accused was fined $15 000 and the individual accused were each fined $2 500 for a total fine of $20 000. An initial appeal by the accused was dismissed on October 5, 1984. A further appeal by the accused was dismissed on April 28, 1986.
False or misleading representation in a material respect (Automobiles)	David Everett and Dominion Van-.ouver Motors Limited, carrying on business as Dominion Pontiac-Buick (Vancouver, British Columbia)	Four charges were laid on November 27, 1985, under paragraph 36(1)(a). The corporate accused pleaded guilty on April 15, 1986 and was convicted, while the charges against the individual accused were stayed. On April 29, 1986, the corporate accused was fined $1 500 on each charge, for a total fine of $6 000.
False or misleading representation in a material respect (Hay cooperative)	Ontario Hay Inc., Keith John Miller and Wellburn Hay Cooperative Ltd., (Middlesex County, Ontario)	One charge was laid on March 19, 1986, under paragraph 36(1)(a). On May 1, 1986, Ontario Hay Inc. and K. Miller pleaded guilty and were convicted and fined $5 000 each, for a total fine of $10 000. The charge against Wellburn Hay Cooperative Ltd. was withdrawn.
False or misleading representation in a material respect (Soft drinks)	Canada Dry Limited (Toronto, Ontario)	One charge was laid on February 12, 1986, under paragraph 36(1)(a). On May 1, 1986, the accused pleaded guilty and was convicted and fined $25 000.
False or misleading representation in a material respect (Appraisal service)	Donald Strowbridge (St. John's, Newfoundland)	One charge was laid on January 15, 1986, under paragraph 36(1)(a). The accused pleaded guilty and on May 1, 1986, was convicted and fined $300.
False or misleading representation in a material respect (Automobiles)	Central Chevrolet Oldsmobile (London) Inc. (London, Ontario)	Four charges were laid on April 2, 1985, under paragraph 36(1)(a). On May 5, 1986, the accused pleaded guilty to one charge and was convicted and fined $3 000. The remaining charges were withdrawn.
Sale above advertised price (Automobiles)	Central Chevrolet Oldsmobile (London) Inc. (London, Ontario)	Four charges were laid on April 2, 1985, under section 37.1. On May 5, 1986, the charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Automobiles)	Cruikshank Motors Limited (Toronto, Ontario)	One charge was laid on November 6, 1985, under paragraph 36(1)(a). On May 7, 1986, the charge was withdrawn.
Non-availability (Automobiles)	Cruikshank Motors Limited (Toronto, Ontario)	One charge was laid on November 6, 1985, under subsection 37(2). On May 7, 1986 the accused pleaded guilty and was convicted and fined $4 000.
False or misleading representation in a material respect (Business opportunities)	Gordon E. Hearn, carrying on business as G.E. Hearn Co. (Aurora, Ontario)	Five charges were laid on October 30, 1985, under paragraph 36(1)(a). On May 15, 1986, the accused pleaded guilty and was convicted and fined $700 on each charge, for a total fine of $3 500.
False or misleading representation in a material respect (Newspaper circulation)	Les Éditions Charles Gagnon Inc. and Charles Gagnon (Cowansville, Québec)	Ten charges were laid on August 30, 1985 under paragraph 36 (1)(a). On December 12, 1985 the corporate accused pleaded guilty to ten charges and the individual accused pleaded guilty to two charges. On May 16, 1986, the corporate accused was fined $100 on each charge and the invividual accused was fined $50 on each charge, for a total fine of $1 100. The remaining charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Mattresses and box springs)	The W.B. Jennings Company Limited, carrying on business as Jennings (St. Thomas, Ontario)	Ten charges were laid on October 28, 1985, under paragraph 36(1)(a). On May 16, 1986, the accused pleaded guilty to one charge and was convicted and fined $3 000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Television sets and video cameras)	J.M. Saucier Electronique Ltée (Montréal, Québec)	Four charges were laid on March 5, 1986, under paragraph 36(1)(a). On June 10, 1986, the accused pleaded guilty and was convicted and fined $1 000 on each charge, for a total fine of $4 000.
False or misleading representation in a material respect (Real estate service)	William Ficzere and Crossroad Real Estate (1977) Limited (Gander, Newfoundland)	One charge was laid on January 13, 1986, against the corporate accused under paragraph 36(1)(a). One charge was laid on March 24, 1986 against the individual accused under the same paragraph. The individual accused pleaded guilty and was convicted and fined $50 on June 18, 1986. The charge against the corporate defendant was withdrawn.
False or misleading representation in a material respect (Rustproofing product)	113661 Canada Inc., carrying on business as Distribution Oiltech Enr., and 124248 Canada Inc. (St. Léonard, Québec)	Six charges were laid on November 18, 1985, under paragraph 36(1)(a). On June 19, 1986, the charges were dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Soft drinks)	Pepsi Cola Canada Ltd. - Pepsi Cola Canada Ltée. (Cornwall, Ontario)	One charge was laid on August 28, 1985, under paragraph 36(1)(a). On June 26, 1986, the charge was withdrawn.
Promotional contest (Soft drinks)	Pepsi Cola Canada Ltd. — Pepsi Cola Canada Ltée. (Cornwall, Ontario)	One charge was laid on August 28, 1985, under section 37.2. On June 26, 1986, the accused pleaded guilty to one charge and was convicted and fined $2 000.
Promotional contest (Coupon booklets)	Sooter Studios Ltd., and Centennial Gift Cheques Ltd. (Winnipeg, Manitoba)	Four charges were laid on July 23, 1985, under section 37.2. On June 26, 1986, Sooter Studios Ltd. was convicted of one charge and fined $10 000. The remaining charges against both accused were stayed.
False or misleading representation in a material respect (Ski wear)	Land's End Ski & Sportswear Ltd., and Gregory Wilfred Dolson (Kamloops, British Columbia)	Twenty-six charges were laid on July 15, 1985, under paragraph 36(1)(a). On November 18, 1985, these charges were stayed and thirty-one new charges were laid under the same paragraph. On June 26, 1986, a stay of proceedings was entered.
False or misleading representation in a material respect (Groceries)	Dominion Stores Limited, carrying on business as Best For Less (Moncton, New Brunswick)	Ten charges were laid on January 9, 1984, under paragraph 36(1)(a). On May 24, 1984, the charges were dismissed. On November 22, 1985, an appeal by the Crown was allowed in part and the accused was convicted on nine charges. On July 4, 1986, the accused was sentenced to a fine of $850 on each charge, for a total fine of $7 650.
Pyramid selling (Cleansing compound)	Sani-True Marketing Ltd. and John Paul Savard (Edmonton, Alberta)	Five charges were laid on April 27, 1983, under section 36.3. On December 6, 1983, the charges against the corporate accused were stayed. On July 4, 1986, the charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Snowmobiles)	Yamaha Motor Canada Ltd. (Toronto, Ontario)	One charge was laid on May 26, 1986, under paragraph 36(1)(a). On July 8, 1986, the accused pleaded guilty and was convicted and fined $10 000.
False or misleading representation in a material respect (Meals)	Wandlyn Motels Limited, carrying on business as Wandlyn Inns (Woodstock, New Brunswick)	One charge was laid on June 19, 1986, under section 37.1. On July 9, 1986, the accused pleaded guilty and was convicted and fined $750.
False or misleading representation in a material respect (Dry goods)	Mark's Work Wearhouse Ltd. (Calgary, Alberta)	Three charges were laid on February 18, 1986, under paragraph 36(1)(a). On July 11, 1986, the charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Promotional contest (Dry goods)	Mark's Work Wearhouse Ltd. (Calgary, Alberta)	One charge was laid on February 18, 1986, under section 37.2. On July 11, 1986 the accused pleaded guilty and was convicted and fined $500.
False or misleading representation in a material respect (Chimney cleaning business)	River Road Farms Limited, carrying on business as Ash Magic (Sydney, Nova Scotia)	One charge was laid on May 6, 1986, under paragraph 36(1)(a). On July 15, 1986, the accused was convicted and fined $200.
False or misleading representation in a material respect (Skin cream and foam bath)	Nature Femme Inc. and Diane Pothier (Montréal, Québec)	Eleven charges were laid on June 9, 1986, under paragraph 36(1)(a). On July 16, 1986, the corporate accused pleaded guilty to five charges and the individual accused pleaded guilty to one charge. The corporate accused was fined $750 on each charge, for a total fine of $3 750, and the individual accused was fined $750. The remaining charges were withdrawn.
Representation without proper test (Skin cream and foam bath)	Nature Femme Inc. and Diane Pothier (Montréal, Québec)	Eleven charges were laid on June 9, 1986, under paragraph 36(1)(b). On July 16, 1986, the charges against both accused were withdrawn.
Misleading price representation (Skin cream and foam bath)	Nature Femme Inc. and Diane Pothier (Montréal, Québec)	Eleven charges were laid on June 9, 1986, under paragraph 36(1)(d). On July 16, 1986, the corporate accused pleaded guilty to five charges and the individual accused pleaded guilty to one charge. The corporate accused was fined $750 on each charge, for a total fine of $3 750, and the individual accused was fined $750. The remaining charges were withdrawn.
False or misleading representation in a material respect (Video-cassette recorder)	Inter-Audio Canada Limited (Pembroke, Ontario)	One charge was laid on January 13, 1986, under paragraph 36(1)(a). On July 22, 1986, the accused pleaded guilty and was convicted and fined $900.
Representation without proper test (Gas saving device)	Professional Technology of Canada Ltd. (Edmonton, Alberta)	One charge was laid on May 27, 1986, under paragraph 36(1)(b). The accused was convicted on May 27, 1986, and on July 31, 1986 was fined $12 500.
False or misleading representation in a material respect (Video machines)	Le Couple Du Son Hi-Fi Inc., carrying on business as Joe Cash (Boucherville, Québec)	Six charges were laid on June 10, 1986, under paragraph 36(1)(a). The accused pleaded guilty to three charges, and on August 6, 1986, was convicted and fined $400 on each charge, for a total fine of $1 200. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Non-availability (Automobiles)	Allegro Car Limited, carrying on business as Docksteader Plymouth Chrysler, and William Alvin Docksteader (Vancouver, British Columbia)	Three charges were laid on March 7, 1986, under subsection 37(2). On August 6, 1986, the charges were stayed.
False or misleading representation in a material respect (Automobiles)	Allegro Car Limited, carrying on business as Docksteader Plymouth Chrysler, and William Alvin Docksteader (Vancouver, British Columbia)	Three charges were laid on March 7, 1986, under paragraph 36(1)(a). The corporate accused pleaded guilty to two charges and was convicted on August 6, 1986. On August 7, 1986, the corporate accused was fined $2 500 on each charge, for a total fine of $5 000. The remaining charges against the corporate accused and all charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Computer equipment)	Data Terminal Mart (1981) Limited and Laurence Polley, carrying on business as Data Terminal Mart (Toronto, Ontario)	Two charges were laid on June 24, 1985, under paragraph 36(1)(a). On August 7, 1986, the charges were dismissed.
False or misleading representation in a material respect (Jewellery)	Vachi K.R. Shimoon, carrying on business as Armen's Jewellery and Goldsmith (Vernon, British Columbia)	Six charges were laid on March 18, 1986, under paragraph 36(1)(a). The accused pleaded not guilty but on August 18, 1986 was convicted and fined $750 on each charge, for a total fine of $4 500.
False or misleading representation in a material respect (Advertising directory)	La Compagnie de Publication Michael Inc. (Montréal, Québec)	Two charges were laid on January 29, 1986, under paragraph 36 (1)(a). On August 26, 1986, the charges were withdrawn.
False or misleading representation in a material respect (Automobiles)	Chebucto Ford Sales Limited (Dartmouth, Nova Scotia)	One charge was laid on December 23, 1985, under paragraph 36(1)(a). The accused pleaded guilty and on September 2, 1986 was convicted and fined $3 000.
False or misleading representation in a material respect (Car stereos)	McKay's T.V. & Audio B.C. Ltd., carrying on business as Madman McKay (Victoria, British Columbia)	Twenty-two charges were laid on June 17, 1986, under paragraph 36(1)(a). The accused pleaded guilty to six charges and on September 5, 1986, was convicted and fined $200 on each count, for a total fine of $1 200. The remaining charges were withdrawn.
Misleading price representation (Car stereos)	McKay's T.V. & Audio B.C. Ltd., carrying on business as Madman McKay (Victoria, British Columbia)	Twenty-three charges were laid on June 17, 1986, under paragraph 36(1)(d). The accused pleaded guilty to four charges and on September 5, 1986, was convicted and fined $200 on each count, for a total fine of $800. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Windows, doors)	Schurman Enterprises Ltd., carrying on business as Schurman Supply (Charlottetown, Prince Edward Island)	One charge was laid on August 14, 1986, under paragraph 36(1)(a). On September 9, 1986, the charge was withdrawn.
False or misleading representation in a material respect (Stamps)	Northern Philatelic Management Corporation, George Minarsky, Paul A. Smith and Canadian Stamp Investors Corporation (Toronto, Ontario)	Six charges were laid on December 27, 1985, under paragraph 36(1)(a). Northern Philatelic Management Corporation, G. Minarsky and P. Smith were charged jointly with respect to three charges, and G. Minarsky and Canadian Stamp Investors Corporation were charged jointly with respect to three additional charges. The information was withdrawn and on July 18, 1986, six new charges were laid under paragraph 36(1)(a). Northern Philatelic Management Corporation, G. Minarsky and P. Smith were charged jointly with respect to three charges, and G. Minarsky and Canadian Stamp Investors Corporation were charged jointly with respect to three additional charges. This information was also withdrawn and on September 15, 1986, two new charges were laid under paragraph 36(1)(a), one against Northern Philatelic Management Corporation and the other against G. Minarsky. On September 15, 1986, the accused pleaded guilty and were convicted. Northern Philatelic Management Corporation was fined $2 500 and G. Minarsky was fined $17 500 for a total fine of $20 000. A prohibition order was also imposed on both accused.

APPENDIX II (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading warranty representation (Stamps)	Northern Philatelic Management Corporation, George Minarsky, Paul A. Smith and Canadian Stamp Investors Corporation (Toronto, Ontario)	Seven charges were laid on December 27, 1985, under paragraph 36(1)(c). Northern Philatelic Management Corporation, G. Minarsky and P. Smith were charged jointly with respect to four charges, and G. Minarsky and Canadian Stamp Investors Corporation were charged jointly with respect to three additional charges. The information was withdrawn, and on July 18, 1986, seven new charges were laid under paragraph 36(1)(c). Northern Philatelic Management Corporation, G. Minarsky and P. Smith were charged jointly with respect to four charges, and G. Minarsky and Canadian Stamp Investors Corporation were charged jointly with respect to three additional charges. This information was also withdrawn, and on September 15, 1986, two new charges were laid under paragraph 36(1)(c), one against Northern Philatelic Management Corporation and the other against G. Minarsky. On September 15, 1986, the accused pleaded guilty and were convicted. Northern Philatelic Management Corporation was fined $2 500 and G. Minarsky was fined $17 500 for a total fine of $20 000. A prohibition order was also imposed on both accused.
False or misleading representation in a material respect (Automobiles)	J. Clark & Son Limited (Fredericton, New Brunswick)	One charge was laid on June 6, 1985, under paragraph 36(1)(a). On September 16, 1985, the accused was acquitted. On September 16, 1986, the Crown's application for leave to appeal was refused.
False or misleading representation in a material respect (Furniture)	Combined Furniture Warehouse Sales Limited, Joseph Vizzari and Robert Young (Hamilton, Ontario)	Eight charges were laid on July 29, 1985, under paragraph 36(1)(a). The three accused were charged jointly with respect to four charges. The corporate accused and R. Young were charged jointly with four additional charges. On April 9, 1986, the charges against the corporate accused were withdrawn. On September 23, 1986, R. Young was convicted on five charges and fined $1 000 on each charge, for a total fine of $5 000. The charges against J. Vizzari were dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Non-availability (Automobiles)	Chrysler Canada Ltd.—Chrysler Canada Ltée, Paul Willison Limited, Ontario Chrysler (1977) Ltd., Raceway Plymouth Chrysler Ltd., Craig Hind Dodge Chrysler Ltd., Scarborotown Dodge Chrysler Ltd., Agincourt Chrysler Plymouth Motors Inc., Jim Davidson Holdings Limited, Jack Wood's Eastway Plymouth Chrysler Limited, Don Robertson Chrysler-Dodge Limited, Peel Chrysler Plymouth Incorporated, Cooksville Dodge Chrysler Inc., Sorenson Chrysler Plymouth Inc., Seven-view Plymouth Chrysler Ltd., Downsview Chrysler Plymouth (1964) Ltd., Mills and Hadwin Limited, Willowdale Dodge Chrysler Limited, Woodbridge Motors Limited, Active Motors Limited, West End Chrysler Dodge (1971) Limited, 546802 Ontario Inc., Islington Chrysler Plymouth (1963) Limited, Erin Dodge Chrysler Ltd., Georgetown Chrysler Ltd. (Toronto, Ontario)	One charge was laid on October 3, 1985, under subsection 37(2). On June 2, 1986, Ontario Chrysler (1977) Ltd., Raceway Plymouth Chrysler Ltd., Craig Hind Dodge Chrysler Ltd., Scarborotown Dodge Chysler Ltd., Agincourt Chrysler Plymouth Motors Inc., Jim Davidson Holdings Limited, Jack Wood's Eastway Plymouth Chrysler Limited, Don Robertson Chrysler-Dodge Limited, Peel Chrysler Plymouth Incorporated, Cooksville Dodge Chrysler Inc., Sorenson Dodge Chrysler Inc., Seven View Plymouth Chrysler Ltd., Downsview Chrysler Plymouth (1964) Ltd., Mills and Hadwin Limited, Woodbridge Motors Limited, Willowdale Dodge Chrysler Limited, Woodbridge Motors Limited, West End Chrysler Dodge (1971) Limited, 546802 Ontario Inc., Islington Chrysler Plymouth (1963) Limited, Erin Dodge Chrysler Ltd., and Georgetown Chrysler Ltd. pleaded guilty. They were convicted and fined $6 000 each, for a total fine of $132 000. On the same date the charge against Chrysler Canada Ltée was withdrawn. On September 24, 1986, the charge against Paul Willison Limited was dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Automobiles)	Chrysler Canada Ltd.—Chrysler Canada Ltée, Paul Willison Limited, Ontario Chrysler (1977) Ltd., Raceway Plymouth Chrysler Ltd., Craig Hind Dodge Chrysler Ltd., Scarborotown Dodge Chrysler Ltd., Agincourt Chrysler Plymouth Motors Inc., Jim Davidson Holdings Limited, Jack Wood's Eastway Plymouth Chrysler Limited, Don Robertson Chrysler-Dodge Limited, Peel Chrysler Plymouth Incorporated, Cooksville Dodge Chrysler Inc., Sorenson Chrysler Plymouth Inc., Sevenview Plymouth Chrysler Ltd., Downsview Chrysler Plymouth (1964) Ltd., Mills and Hadwin Limited, Willowdale Dodge Chrysler Limited, Woodbridge Motors Limited, Active Motors Limited, West End Chrysler Dodge (1971) Limited, 546802 Ontario Inc., Islington Chrysler Plymouth (1963) Limited, Erin Dodge Chrysler Ltd., Georgetown Chrysler Ltd. (Toronto, Ontario)	One charge was laid on October 3, 1985, under section 37.1. On June 2, 1986, the charge against all the accused except Paul Willison Limited was withdrawn. On September 24, 1986, the charge against Paul Willison Limited was dismissed.
False or misleading representation in a material respect (Barbecue and accessories)	Allen Young, Scott Young, Tradex Supply Ltd., and Allen Young & Associates (1984) Inc., carrying on business as Barbeques Galore (Toronto, Ontario)	Twelve charges were laid on February 27, 1986, under paragraph 36(1)(a). On September 29, 1986, Tradex Supply Ltd. and Allen Young & Associates (1984) Inc. pleaded guilty to one charge, and were convicted. Tradex Supply Ltd. was fined $10 000, and Allen Young & Associates (1984) Inc. was fined $2 000 for a total fine of $12 000. The remaining charges against Tradex Supply Ltd. and Allen Young & Associates (1984) Inc. and all charges against the individual accused were withdrawn.
Representation without proper test (Water filters)	Ronnie Svensson, Theresa Couillard, and 216977 Alberta Ltd., carrying on business as Performance Filters and Royal Doulton Water Purification (Edmonton, Alberta)	One charge was laid on July 11, 1986, under paragraph 36(1)(b). The charge was withdrawn on October 2, 1986.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Jewellery)	Josephine Bobb and Josie's Gold N Gems Ltd., carrying on business as Gold N Gems (Vancouver, British Columbia)	Twenty-one charges were laid on February 7, 1986, under paragraph 36(1)(a). The corporate accused pleaded guilty to five chages, and on October 3, 1986, was convicted and fined $1 000 on each count, for a total fine of $5 000. The remaining charges against the corporate accused, and all charges against the individual accused were stayed.
Misleading price representation (Jewellery)	Josephine Bobb and Josie's Gold N Gems Ltd., carrying on business as Gold N Gems (Vancouver, British Columbia)	Thirteen charges were laid on February 7, 1986, under paragraph 36(1)(d). On October 3, 1986, all charges were stayed.
False or misleading representation in a material respect (Advertising)	Alrick Publishing Limited, carrying on business as Sault This Week and Sault This Week TV News (Sault St. Marie, Ontario)	Three charges were laid on January 29, 1986, under paragraph 36(1)(a). The accused pleaded guilty to one charge, and on October 6, 1986, was convicted and fined $2 000. The remaining charges were withdrawn.
Representation without proper test (Advertising)	Alrick Publishing Limited, carrying on business as Sault This Week and as Sault This Week TV News (Sault St. Marie, Ontario)	Two charges were laid on January 29, 1986, under paragraph 36(1)(b). On October 6, 1986, the charges were withdrawn.
Representation without proper test (Boilers)	W.R. Benjamin Products Limited (Dartmouth, Nova Scotia)	One charge was laid on September 8, 1986, under paragraph 36(1)(b). The accused pleaded guilty, and on October 6, 1986, was convicted and fined $1 000.
False or misleading representation in a material respect (Cosmetic treatment)	The Winnipeg Magic Room Ltd., carrying on business as the Magic Room (Winnipeg, Manitoba)	One charge was laid on September 25, 1985, under paragraph 36(1)(a). The accused pleaded guilty and on October 7, 1986, was convicted and fined $750.
Promotional contest (Furniture)	Geneca Inc., carrying on business as Bébé Butler Enr. (Montréal, Québec)	One charge was laid on September 9, 1986, under section 37.2. The accused pleaded guilty and on October 8, 1986 was convicted and fined $800.
False or misleading representation in a material respect (Jewellery)	Lawrence "Larry" Litvack, Janice Litvack and Ring King's Jewellery Wholesale Ltd., formerly known as Toronto Watch and Diamond Centre Ltd., as Toronto Watch Hospital and as Jewellery Sales Ltd. (Toronto, Ontario)	Twenty-one charges were laid on April 26, 1985, under paragraph 36(1)(a). On March 7, 1986, the corporate accused pleaded guilty to two charges and was convicted and fined $7 500 on each charge, for a total fine of $15 000. The remaining charges against the corporate accused, and all the charges against J. Litvack were withdrawn. On October 8, 1986, the charges against L. Litvack were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Coupon booklet)	Mélanie Lampe Internationale Limitée and John Trnkus (Montréal, Québec)	Five charges were laid on October 24, 1985, under paragraph 36(1)(a). On January 8, 1986, the corporate accused pleaded guilty to three charges, and was convicted. The two remaining charges against the corporate accused were withdrawn. On February 3, 1986, the corporate accused was fined $500 on each charge, for a total fine of $1 500. On October 8, 1986, the five charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Rental accommodation)	CMAC Systems Ltd., Darrell Bachman and Ephrom Bachman (Vancouver, British Columbia)	On September 27, 1985, thirteen charges were laid against the corporate accused, nine charges were laid against D. Bachman and eight charges were laid against E. Bachman under paragraph 36(1)(a). All the accused pleaded not guilty, but on March 13, 1986, the corporate accused was convicted on nine charges and fined $10 000 on one charge and $1 000 on each of the remaining eight charges, for a total fine of $18 000. D. Bachman was convicted on eight charges and fined $1 000 on one charge and $10 on each of the remaining seven charges, for a total fine of $1 070. The remaining charges against these accused were dismissed, and all charges against E. Bachman were stayed. On October 9, 1986, an appeal against conviction by the accused was abandoned.
Promotional contests (Vacuum cleaner)	Narinder Sekhon and Superior Productions Inc. formerly Sekhon Marketing Ltd. (Edmonton, Alberta)	One charge was laid on February 21, 1986, against Sekhon Marketing Ltd. under section 37.2. On February 27, 1986, the information was amended to change the name of the accused to Superior Productions Inc., formerly Sekhon Marketing Ltd. On October 10, 1986, the information was further amended to add Narinder Sekhon as co-accused. The corporate accused pleaded not guilty, but on October 10, 1986, was convicted and fined $400. The individual accused was acquitted.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Paint)	Heather Building Supplies Ltd. (Sydney, Nova Scotia)	Two charges were laid on February 11, 1985, under paragraph 36(1)(d). The accused pleaded not guilty, but on May 28, 1985, was convicted and fined $200 on each charge, for a total fine of $400. An appeal by the accused against conviction and sentence was allowed on March 12, 1986, and the accused was acquitted. A further appeal by the Crown was abandoned on October 10, 1986.
False or misleading representation in a material respect (Employment as vacuum cleaner sales personnel)	Fayyaz Ahmad, Wayne Gilchrist and 539134 Ontario Inc., carrying on business as A & G Enterprises (Sudbury, Ontario)	Six charges were laid on December 9, 1985, under paragraph 36(1)(a). The individual accused pleaded guilty to one charge, and on October 14, 1986, were keep convicted and fined $2 000 each, for a total fine of $4 000. The remaining charges against the individual accused, and all charges against the corporate accused were withdrawn.
Misleading price representation (Vacuum cleaner)	Fayyaz Ahmad, Wayne Gilchrist and 539134 Ontario Inc., carrying on business as A & G Enterprises (Sudbury, Ontario)	Four charges were laid on December 9, 1985, under paragraph 36(1)(d). The individual accused pleaded guilty to one charge, and on October 14, 1986, were convicted and fined $2 000 each, for a total fine of $4 000. The remaining charges against the individual accused, and all charges against the corporate accused were withdrawn.
False or misleading representation in a material respect (Jewellery)	Hersh Litvack, Arlene Litvack and Canadian Gold Wholesalers Ltd., formerly 443587 Ontario Limited, carrying on business as Canadian Gold Wholesalers (Toronto, Ontario)	Twelve charges were laid on July 6, 1984, under paragraph 36(1)(a). On October 15, 1985, the corporate accused pleaded guilty to the charges and was convicted and fined $5 000 on each of two charges and $4 000 on each of the remaining charges, for a total fine of $50 000. On October 16, 1986, the charges against the individual accused were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Furniture)	Fred Kolowrat, Doris Kolowrat and Neotar Enterprises Ltd., carrying on business as City Sofa and as Tecum Teak (Victoria, British Columbia)	Five charges were laid on November 9, 1984, under paragraph 36(1)(a). On June 27, 1985, the accused were acquitted on all counts. On January 7, 1986, an appeal by the Crown was allowed in part and a new trial was ordered in respect of three charges. On September 25, 1986, the corporate accused pleaded guilty to all charges and F. Kolowrat pleaded guilty to one charge, and both were convicted. On October 16, 1986, the corporate accused was fined $500 on each charge for a total fine of $1 500, and F. Kolowrat was fined $200, for a total fine of $1 700. The remaining charges against F. Kolowrat and all charges against D. Kolowrat were stayed.
False or misleading representation in a material respect (Pay television)	First Choice Canadian Communications Corporation (Nationwide)	Forty-seven charges were laid on November 8, 1984, under paragraph 36(1)(a). On November 15, 1985, the accused was convicted on one charge and on January 3, 1986, was fined $15 000. The remaining charges were withdrawn. On October 20, 1986, an appeal by the Crown was allowed, and the fine was increased to $25 000.
False or misleading representation in a material respect (Fitness club membership)	Gym Ventures Inc. (Winnipeg, Manitoba)	Four charges were laid on March 25, 1986, under paragraph 36(1)(a). On October 20, 1986, the four charges were amalgamated into one charge, to which the accused pleaded guilty. He was convicted, and on October 29, 1986, was fined $1 000.
False or misleading representation in a material respect (Carpets)	Bokhara Carpet Palace Ltd. (Edmonton, Alberta)	Two charges were laid on February 28, 1986, under paragraph 36(1)(a). The accused pleaded guilty, and on November 3, 1986 was convicted and fined $800 on each count, for a total fine of $1 600.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Carpets)	Bokhara Carpet Palace Ltd. and A & B Financiers and Liquidators Ltd. (Calgary, Alberta)	Five charges were laid against both accused on February 28, 1986, under paragraph 36(1)(a). On the same day four additional charges were laid against Bokhara Carpet Palace Ltd. under the same paragraph. Bokhara Carpet Palace Ltd. pleaded guilty to two charges, and on November 3, 1986, was convicted and fined $800 on each court, for a total fine of $1 600. The remaining charges against this accused, and all charges against A & B Financiers and Liquidators Ltd. were withdrawn.
False or misleading representation in a material respect (Promotional packages)	Marcel Prévost, Marcel Guillemette and 132131 Canada Inc., carrying on business as Promotions Voyages Bonis (Shawinigan and Grand-Mère, Québec)	Twenty-four charges were laid against the corporate accused on June 6, 1986, under paragraph 36(1)(a). On the same day fourteen charges were laid against M. Prévost and ten charges were laid against M. Guillemette, under paragraph 36(1)(a). On November 5, 1986, M. Prévost pleaded guilty to seven charges and was convicted and fined $100 on each charge, for a total fine of $700. On the same day M. Guillemette pleaded guilty to five charges, and was convicted and fined $100 on each charge, for a total fine of $500. All the charges against the accused corporation and the remaining charges against M. Prévost and M. Guillemette were withdrawn.
Sale above advertised price (Shampoo and grocery items)	Westfair Foods Ltd., carrying on business as the Real Canadian Superstore (Edmonton, Alberta)	Four charges were laid on May 29, 1986, under section 37.1. The accused pleaded guilty to two charges, and on November 5, 1986, was convicted and fined $1 500 on each charge, for a total fine of $3 000. The remaining charges were stayed.
False or misleading representation in a material respect (Employment opportunities)	Jorge Manuel Fonseca and Motivation Gold Incorporated, carrying on business as Motivation Gold Inc., Motivation Gold, and Wholesale Warehouse (Hamilton, Ontario)	Thirty-five charges were laid on January 31, 1986, under paragraph 36(1)(a). The accused each pleaded guilty to one charge, and on November 10, 1986, were convicted. The corporate accused was fined $10 000 and the individual accused was fined $5 000, for a total fine of $15 000. The remaining charges against both accused were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Employment opportunities)	Wolfgang Viola and 610514 Ontario Limited, carrying on business as Jamer Industries, Jamers Enterprises, J.A.M.ers, W.W. Industries and/or W.W.I., Wholesale Warehouse, Wholesale Warehousing, Wholesale Warehousing Industries (Toronto, Ontario)	Thirty-six charges were laid on January 31, 1986, against both accused under paragraph 36(1)(a). The corporate accused pleaded guilty to two charges, and on November 10, 1986, was convicted and fined $3 000 on each charge, for a total fine of $6 000. The remaining charges against the corporate accused and all charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Seafood)	81853 Canada Ltd., carrying on business as Marché D'Alimentation Esposito Eng/Esposito Foodmarket Reg'd (St. Laurent, Québec)	Two charges were laid on September 11, 1986, under paragraph 36(1)(a). The accused pleaded guilty to one charge, and on November 20, 1986, was convicted and fined $1 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Furniture)	Ameublement C.D.M. Inc. (Montréal, Québec)	One charge was laid on April 24, 1986, under paragraph 36(1)(a). The accused pleaded guilty and on November 24, 1986 was convicted and fined $500.
Representation without proper test (Water filters)	Dorob Enterprises Ltd., Barry D. Gunn and James Bowen (Winnipeg, Manitoba)	One charge was laid on September 25, 1985, under paragraph 36(1)(b). The corporate accused pleaded guilty, and on November 26, 1986, was convicted and fined $1 000, and ordered to pay $7 500 in restitution to the five complainants. Charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Magazine subscriptions)	Cap-Ron Trading Ltd., carrying on business as Nor-Pac Marketing, Shannon O'Brien, Mark Armstrong, Joe Strawford, and Steve Davis (Edmonton, Alberta)	Five charges were laid on August 2, 1985, under paragraph 36(1)(a). The corporate accused and Davis were jointly charged with respect to two charges, and the corporate accused and each of the remaining accused were jointly charged with respect to one charge. On December 16, 1985, four charges were dismissed. An appeal by the Crown against the dismissal was allowed on May 16, 1986, and a new trial was ordered. On September 16, 1986, the accused were acquitted of all five charges. On October 9, 1986, the Crown filed a notice of appeal against dismissal, but on November 27, 1986, the appeal was abandoned.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Photocopy supplies)	266104 Alberta Ltd., carrying on business as Office Supplies International, Carrole D. Yates, Thomas G. Yates (Calgary, Alberta)	Six charges were laid on February 11, 1986, under paragraph 36(1)(a). On October 3, 1986, an additional charge under the same paragraph was laid against C.D. Yates and the corporate accused. On December 1, 1986, the corporate accused pleaded guilty, and was convicted and fined $10 000 on each charge, for a total fine of $70 000. All charges against the individual accused were stayed.
Misleading price representation (Photocopy supplies)	266104 Alberta Ltd., carrying on business as Office Supplies International Carrole D. Yates, Thomas G. Yates (Calgary, Alberta)	Two charges were laid on February 11, 1986, under paragraph 36(1)(d). On December 1, 1986, the corporate accused pleaded guilty, and was convicted and fined $10 000 on each charge, for a total fine of $20 000. All charges against the individual accused were stayed.
False or misleading representation in a material respect (Patio furniture)	Piscines Trevi Inc. (Montréal, Québec)	Two charges were laid on June 27, 1986, under paragraph 36(1)(a). The accused pleaded guilty, and on December 4, 1986, was convicted and fined $5 000 on each charge, for a total fine of $10 000.
Misleading price representation (Patio furniture)	Piscines Trevi Inc. (Montréal, Québec)	Eight charges were laid on June 27, 1986, under paragraph 36(1)(d). The accused pleaded guilty, and on December 4, 1986, was convicted and fined $1 500 on each charge, for a total fine of $12 000.
Non-availability (Blankets)	J. Pascal Inc. (Montréal, Québec)	One charge was laid on July 9, 1986, under subsection 37(2). The accused pleaded not guilty, but on December 5, 1986, was convicted and fined $1 000.
Non-availability (Typewriters)	Distribution Aux Consommateurs Compagnie Limitée/Consumers Distributing Company Limited (Shawinigan, Québec)	One charge was laid on July 24, 1986, under subsection 37(2). The accused pleaded guilty, and on December 8, 1986 was convicted and fined $1 000.
Misleading price representation (Bicycles)	El Pedalo Centre du Bicycliste Inc. (Montréal, Québec)	Seven charges were laid on September 9, 1986, under paragraph 36(1)(d). The accused pleaded not guilty, but on December 11, 1986, was convicted of one charge and fined $3 000. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Motorcycles)	Alascott Holdings Limited, carrying on business as Cycle World (Toronto, Ontario)	Nine charges were laid on August 14, 1986, under paragraph 36(1)(a). The accused pleaded guilty to three charges, and on December 12, 1986, was convicted and fined $10 000 on each charge, for a total fine of $30 000. The remaining charges were withdrawn.
Misleading price representation (Motorcycles)	Alascott Holdings Limited, carrying on business as Cycle World (Toronto, Ontario)	Nine charges were laid on August 14, 1986, under paragraph 36(1)(d). The accused pleaded guilty to one charge, and on December 12, 1986, was convicted and fined $2 500. The remaining charges were withdrawn.
Sale above advertised price (Motorcycles)	Alascott Holdings Limited, carrying on business as Cycle World (Toronto, Ontario)	Two charges were laid on August 14, 1986, under section 37.1. On December 12, 1986, the charges were withdrawn.
Non-availability (Typewriter)	Distribution Aux Consommateurs Compagnie Limitée/Consumers Distributing Company Limited (Trois-Rivières, Québec)	One charge was laid on July 24, 1986, under subsection 37(2). The accused pleaded guilty, and on December 12, 1986, was convicted and fined $1 000.
False or misleading representation in a material respect (Vertical blinds)	Tapis & Draperie Saguenay Ltée (Chicoutimi, Québec)	Two charges were laid on February 27, 1986, under paragraph 36(1)(a). On September 19, 1986, the accused pleaded guilty to one charge and was convicted. On December 15, 1986, the accused was fined $1 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Gas saving device)	Hitime Freeheat (Alta.) Corp., and B.B.C. Industries Canada Limited (Lethbridge, Alberta)	Two informations containing four charges were laid on October 17, 1986, under paragraph 36(1)(a). One information, containing two charges was laid against Hitime Freeheat (Alta.) Corp., and the other information, also containing two charges, was laid against B.B.C. Industries Canada Limited. Both accused pleaded guilty, and on December 16, 1986 were convicted. Hitime Freeheat (Alta.) Corp. was fined $1 000 on each charge, for a total fine of $2 000, and B.B.C. Industries Canada Limited was fined $1 500 on each charge, for a total fine of $3 000.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Gas saving device)	Hitime Freeheat (Alta.) Corp., and B.B.C. Industries Canada Limited (Lethbridge, Alberta)	Two informations containing four charges were laid on October 17, 1986, under paragraph 36)1)(b). One information, containing two charges, was laid against Hitime Freeheat (Alta.) Corp., and the other information, also containing two charges, was laid against B.B.C. Industries Canada Limited. Both accused pleaded guilty, and on December 16, 1986, were convicted. Hitime Freeheat (Alta.) Corp. was fined $1 000 on each charge, for a total fine of $2 000, and B.B.C. Industries Canada Limited was fined $1 500 on each count, for a total fine of $3 000.
Misleading price representation (Gold chains)	Lilian Enterprises Co. Ltd., carrying on business as Jewellery Mart and as International Village Gift Centre (Vancouver, British Columbia)	Two charges were laid on November 14, 1986, under paragraph 36(1)(d). The accused pleaded guilty, and on December 16, 1986, was convicted and fined $2 500 on each charge, for a total fine of $5 000.
False or misleading representation in a material respect (Sofas)	The Sofa Shoppe Ltd. and Harvey Holland (Toronto, Ontario)	One charge was laid on August 5, 1986, under paragraph 36(1)(a). The corporate accused pleaded guilty, and on December 17, 1986, was convicted and fined $4 000. The charge against the individual accused was withdrawn.
Misleading price representation (Sofas)	The Sofa Shoppe Ltd. and Harvey Holland (Toronto, Ontario)	Five charges were laid on August 5, 1986, under paragraph 36(1)(d). The corporate accused pleaded guilty to one charge, and on December 17, 1986, was convicted and fined $1 000. The remaining charges against the corporate accused and all charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Water treatment device)	Carrington Laboratories of Canada Ltd. (formerly Avacare of Canada Limited), Ian Nadler, Davina Robinson, and Grant Lawson Swint (Toronto, Ontario)	Three charges were laid on June 27, 1986, under paragraph 36(1)(a). Avacare of Canada Limited and each of the individual accused were jointly charged with respect to one charge. On August 20, 1986, a new information was laid to amend the name of the corporate accused to Carrington Laboratories of Canada Ltd. On December 17, 1986, the charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Water treatment device)	Carrington Laboratories of Canada Ltd. (formerly Avacare of Canada Limited), Ian Nadler, Davina Robinson, and Grant Lawson Swint (Toronto, Ontario)	Seventeen charges were laid on June 27, 1986, under paragraph 36(1)(b). Seven charges were against Avacare of Canada Limited and I. Nadler, five charges were against Avacare of Canada Limited and D. Robinson, and five charges were against Avacare of Canada Limited and G. Swint. On August 20, 1986, a new information was laid to amend the name of the corporate accused to Carrington Laboratories of Canada Ltd. On December 17, 1986, the corporate accused pleaded guilty to two charges, and was convicted and fined $2 000 on each charge, for a total fine of $4 000. I. Nadler pleaded guilty to one charge, and was convicted and fined $500. G. Swint pleaded guilty to one charge, and was convicted and fined $500. The remaining charges against the corporate accused, I. Nadler and G. Swint, and all charges against D. Robinson were withdrawn.
Pyramid selling scheme (Water treatment device)	Carrington Laboratories of Canada Ltd. (formerly Avacare of Canada Limited), and Ian Nadler (Toronto, Ontario)	One charge was laid on June 27, 1986, against Avacare of Canada Limited and I. Nadler under section 36.3. On August 20, 1986, a new information was laid to amend the name of the corporate accused to Carrington Laboratories of Canada Ltd. On December 17, 1986, the charge was withdrawn.
False or misleading representation in a material respect (Audio and video electronic equipment)	John Park, Espark Electronics Limited, J.C. Park Electronics Limited, Johnpark Electronics Ltd., Sunglym Electronics Limited, and Aloha Electronics Ltd., carrying on business as Hi-Fi Centre (Toronto, Ontario)	Forty-two charges were laid on October 23, 1986, under paragraph 36(1)(a). All the accused were jointly charged with respect to thirty-three charges. J. Park, Espark Electronics Limited, J.C. Park Electronics Limited, Johnpark Electronics Ltd., and Sunglym Electronics Limited were jointly charged with respect to an additional eight charges. J. Park and Johnpark Electronics Ltd. were jointly charged with respect to one additional charge. Johnpark Electronics Ltd. pleaded guilty to six charges, and on December 23, 1986, was convicted and fined $5 000 on each of five charges and $2 500 on one charge, for a total fine of $27 500. The remaining charges against Johnpark Electronics Ltd., and all charges against the other accused were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Non-availability (Video cassette recorders)	John Park, Espark Electronics Limited, J.C. Park Electronics Limited, Johnpark Electronics Ltd., Sunglym Electronics, and Aloha Electronics Ltd., carrying on business as Hi-Fi Centre (Toronto, Ontario)	One charge was laid on October 23, 1986, under subsection 37(2). Johnpark Electronics Ltd. pleaded guilty, and on December 23, 1986, was convicted and fined $5 000. Charges against the other accused were withdrawn.
Sale above advertised price (Tape decks)	John Park, J.C. Park Electronics Limited, and Johnpark Electronics Ltd., carrying on business as Hi-Fi Centre (Toronto, Ontario)	Two charges were laid on October 23, 1986, under section 37.1. All the accused were jointly charged with respect to one charge, and J. Park and Johnpark Electronics Ltd. were charged jointly with respect to an additional charge. Johnpark Electronics Ltd. pleaded guilty to one charge, and on December 23, 1986, was convicted and fined $2 500. The remaining charge against Johnpark Electronics Ltd., and all charges against the other accused were withdrawn.
False or misleading representation in a material respect (Automobiles)	Wood Motors Limited, carrying on business as Wood Motors Ford (Dartmouth, Nova Scotia)	One charge was laid on September 4, 1986, under paragraph 36(1)(a). The accused pleaded guilty, and on January 5, 1987 was convicted and fined $1 000.
False or misleading representation in a material respect (Grocery and kitchen items)	Food Market Holding Co. Ltd., formerly known as Loblaws Limited (Toronto, Ontario)	Three charges were laid on June 11, 1986, under paragraph 36(1)(a). The accused pleaded guilty to two charges, and on January 7, 1987 was convicted and fined $40 000 on one charge and $35 000 on the other charge, for a total fine of $75 000. The remaining charge was withdrawn.
Misleading price representation (Kitchen items)	Food Market Holding Co. Ltd., formerly known as Loblaws Limited (Toronto, Ontario)	Two charges were laid on June 11, 1986, under paragraph 36(1)(d). On January 7, 1987, the charges were withdrawn.
False or misleading representation in a materisl respect (Vertical blinds)	Robert Moreau, carrying on business as Sebast Enr. (Ste-Anne, Québec)	Three charges were laid on September 11, 1986, under paragraph 36(1)(a). The accused pleaded guilty and on January 16, 1987 was convicted and fined $200 on each charge, for a total fine of $600.
False or misleading representation in a material respect (Gasoline)	Les Entreprises Ménard Ltée (Granby, Québec)	Four charges were laid on December 2, 1986, under paragraph 36(1)(a). The accused pleaded guilty and on January 19, 1987 was convicted and fined $1 250 on each charge, for a total fine of $5 000.
Misleading price representation (Gasoline)	Les Entreprises Ménard Ltée (Granby, Québec)	Three charges were laid on December 2, 1986, under paragraph 36(1)(d). On January 19, 1987 the charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Gasoline)	Les Entreprises Ménard Ltée (Granby, Québec)	Two charges were laid on December 2, 1986, under section 37.1. On January 19, 1987 the charges were withdrawn.
False or misleading representation in a material respect (Fire extinguishers)	Carefree Enterprises Ltd. (Calgary, Alberta)	Four charges were laid on October 17, 1986, under paragraph 36(1)(a). On January 20, 1987 a stay of proceedings was entered.
False or misleading representation in a material respect (Miscellaneous items)	Joiner Commercial Industrial Sales Ltd. (Saskatoon, Saskatchewan)	Two charges were laid on May 23, 1986, under paragraph 36(1)(a). The accused pleaded not guilty but on January 22, 1987 was convicted and fined $1 000 on each charge, for a total fine of $2 000.
False or misleading representation in a material respect (Tires)	Centre de Pneus BSL Inc. (Rimouski, Québec)	Four charges were laid on November 8, 1985, under paragraph 36(1)(a). The accused pleaded guilty and on January 26, 1987 was convicted and fined $375 on each charge, for a total fine of $1 500.
False or misleading representation in a material respect (Jewellery)	Crescent Jewellers and Appliances Limited, carrying on business as Crescent Jewellers (Dartmouth, Nova Scotia)	Fifteen charges were laid on May 1, 1986, under paragraph 36(1)(a). The accused pleaded guilty to three charges, and on January 26, 1987 was convicted and fined $4 000 on each charge, for a total fine of $12 000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Televisions)	Michael John O'Brien and 541063 Ontario Limited, carrying on business as Wacky Wicks (Peterborough, Ontario)	Four charges were laid on September 22, 1986, under paragraph 36(1)(a). On November 12, 1986, all charges against the corporate accused were withdrawn. On January 26, 1987, all charges against the individual accused were withdrawn.
Sale above advertised price (Televisions)	Michael John O'Brien and 541063 Ontario Limited, carrying on business as Wacky Wicks (Peterborough, Ontario)	Four charges were laid on September 22, 1986, under section 37.1. On November 12, 1986 the corporate accused pleaded guilty, and was convicted and fined $2 000 on each charge, for a total fine of $8 000. On January 26, 1987, all charges against the individual accused were withdrawn.
False or misleading representation in a material respect (Vertical blinds)	Au Coin du Tapis (Chicoutimi, Québec)	Two charges were laid on September 19, 1986, under paragraph 36(1)(a). The accused pleaded guilty to one charge and on February 2, 1987 was convicted and fined $1 000. The remaining charge was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Vertical blinds)	Au Coin du Tapis (Chicoutimi, Québec)	Two charges were laid on September 19, 1986, under paragraph 36(1)(d). The accused pleaded guilty to one charge and on February 2, 1987, was convicted and fined $1 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Waterbeds)	Michael Charles Gallant, carrying on business as Wallaceburg Waterbeds (Cambridge, Ontario)	One charge was laid on July 4, 1986, under paragraph 36(1)(a). The accused pleaded guilty and on February 4, 1987 was convicted and fined $1 000.
False or misleading representation in a material respect (Herbicide)	Monsanto Canada Inc. (Edmonton, Alberta)	One charge was laid on January 27, 1986, under paragraph 36(1)(a). On October 2, 1986, the accused was acquitted. An appeal by the Crown was dismissed on February 12, 1987.
False or misleading representation in a material respect (Automobiles)	Chebucto Ford Sales Limited (Dartmouth, Nova Scotia)	Three charges were laid on June 19, 1986, under paragraph 36(1)(a). The accused pleaded guilty to two charges and on February 13, 1987 was convicted and fined $5 000 on each charge, for a total fine of $10 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Automobiles)	Total Ford Sales Limited (Toronto, Ontario)	Twenty-two charges were laid on June 20, 1985, under paragraph 36(1)(a). On July 11, 1986, the accused pleaded guilty and was convicted and fined $3 000 on each charge, for a total fine of $66 000. On February 17, 1987, an appeal by the accused against conviction was dismissed, and an appeal by the accused against sentence was allowed, reducing the fine to $19 600.
False or misleading representation in a material respect (Waterbeds)	Regina Waterbed Factory Ltd. (Regina, Saskatchewan)	Four charges were laid on July 18, 1986, under paragraph 36(1)(a). The accused pleaded guilty to two charges, and on February 17, 1987 was convicted and fined $650 on each charge, for a total fine of $1 300. The remaining charges were withdrawn.
False or misleading representation in a material respect (Mattresses)	The Cameo Sleep Shop Limited, carrying on business as The Sleep Shop (Ottawa, Ontario)	One charge was laid on August 12, 1985, under paragraph 36(1)(a). The accused pleaded not guilty but on March 11, 1986 was convicted and fined $200. An appeal against sentence by the Crown was dismissed on February 25, 1987.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Major appliances)	Bernard J. Melford and 593868 Ontario Inc. (Toronto, Ontario)	Six charges were laid on October 30, 1986, under paragraph 36(1)(a). The corporate accused pleaded guilty to one charge, and on February 25, 1987 was convicted and fined $18 000. The remaining charges against the corporate accused and all charges against the individual accused were stayed.
False or misleading representation in a material respect (Sailboards)	Expéditions Nord-Québec Inc., carrying on business as Boutique Plein Vent (Montréal, Québec)	One charge was laid on January 8, 1987, under paragraph 36(1)(a). The accused pleaded guilty and on March 4, 1987 was convicted and fined $500.
Misleading price representation (Sailboards)	Expéditions Nord-Québec Inc., carrying on business as Boutique Plein Vent (Montréal, Québec)	Two charges were laid on January 8, 1987, under paragraph 36(1)(d). The accused pleaded guilty and on March 4, 1987 was convicted and fined $500 on each charge, for a total fine of $1 000.
False or misleading representation in a material respect (Package tours)	314347 Ontario Limited, carrying on business as Talk Travel & Tours, and Larry Kleinmetz (Toronto, Ontario)	Five charges were laid on March 27, 1986, under paragraph 36(1)(a). On March 5, 1987, the charges were dismissed.
False or misleading representation in a material respect (T.V. antennae)	C.C.C.L. Canadian Consumer Company Ltd. (Montréal, Québec)	One charge was laid on November 23, 1979, under paragraph 36(1)(a). The accused was convicted on December 11, 1980 and fined $7 500 on January 10, 1981. An appeal filed by the accused against conviction was abandoned on March 13, 1987.
Misleading price representation (Jewellery)	Ernest Lebi, carrying on business as Guarantee Watch & Sales Co. (St. John's, Newfoundland)	One charge was laid on January 12, 1987, under paragraph 36(1)(d). The accused pleaded guilty and on March 18, 1987 was convicted and fined $2 000.
False or misleading representation in a material respect (Compact disc players)	Dakota Development Company Ltd., carrying on business as Kelly's Electronic World (Calgary, Alberta)	One charge was laid on October 3, 1986, under paragraph 36(1)(a). On March 25, 1987, the charge was stayed.
Misleading price representation (Compact disc players, portable cassette recorders)	Dakota Development Company Ltd., carrying on business as Kelly's Electronic World and Kelly's (Calgary, Alberta and Vancouver, British Columbia)	Six charges were laid on August 21, 1986, under paragraph 36(1)(d). An additional charge was laid on October 3, 1986, under paragraph 36(1)(d). The accused pleaded guilty to five charges, and on March 25, 1987 was convicted and fined $1 000 on each charge, for a total fine of $5 000. The remaining charges were stayed.
False or misleading representation in a material respect (Vacation cruises)	Value Vacations Limited (Toronto, Ontario)	Three charges were laid on July 10, 1986, under paragraph 36(1)(a). The accused pleaded not guilty but on March 25, 1987 was convicted and fined $400 on each charge, for a total fine of $1 200.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Gas saving device)	Harvey Freedman and Marc Stuart Investments Incorporated (Toronto, Ontario)	Four charges were laid on November 14, 1985, under paragraph 36(1)(b). Both accused pleaded guilty to one charge and on March 30, 1987 were convicted. The corporate accused was fined $10 000, and the individual accused was fined $2 000, for a total fine of $12 000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Lighting fixtures)	Harris & Roome Supply Limited (Halifax, Nova Scotia)	One charge was laid on March 24, 1987, under paragraph 36(1)(a). The accused pleaded guilty and on March 30, 1987, was convicted and fined $1 500.
Misleading price representation (Lighting fixtures)	Harris & Roome Supply Limited (Halifax, Nova Scotia)	One charge was laid on March 24, 1987, under paragraph 36(1)(d). On March 30, 1987, the charge was withdrawn.
False or misleading representation in a material respect (Vertical blinds)	Univers de la Couleur Inc. (Chicoutimi, Québec)	Two charges were laid on June 2, 1986, under paragraph 36(1)(a). On March 30, 1987, the charges were withdrawn.
Misleading price representation (Vertical blinds)	Univers de la Couleur Inc. (Chicoutimi, Québec)	Two charges were laid on June 2, 1986, under paragraph 36(1)(d). The accused pleaded not guilty but on March 30, 1987 was convicted and fined $500 on the first charge and $1 000 on the second charge, for a total fine of $1 500.
False or misleading representation in a material respect (Fuel saving device)	Vahan Kassabian, carrying on business as Shieldco (Mississauga, Ontario)	Two charges were laid on August 29, 1985, under paragraph 36(1)(a). The accused pleaded not guilty, but on March 31, 1987 was convicted on one charge, and fined $850. The remaining charge was dismissed.
Representation without proper test (Fuel saving device)	Vahan Kassabian, carrying on business as Shieldco (Mississauga, Ontario)	One charge was laid on August 29, 1985, under paragraph 36(1)(b). The accused pleaded not guilty, but on March 31, 1987 was convicted and fined $850.
Misleading price representation (Fuel saving device)	Vahan Kassabian, carrying on business as Shieldco (Mississauga, Ontario)	One charge was laid on August 29, 1985, under paragraph 36(1)(d). On March 31, 1987, the charge was withdrawn.

APPENDIX III

Proceedings Completed Following Application to the Competition Tribunal Under Part VII of the Act

Nature of Inquiry	Names of persons or Companies Proceeded Against	Action Taken and Results
Merger (Milk and dairy products)	Palm Dairies Limited, 340280 Alberta Limited, Fraser Valley Milk Producers Cooperative Association, Northern Alberta Dairy Pool Limited, Central Alberta Dairy Pool, Dairy Producers Cooperative Limited, 340379 Alberta Ltd. and Union Enterprises Ltd.	An application for an interim injunction under subsection 72(1) was filed with the Tribunal on September 11, 1986. On October 20, 1986, that application was withdrawn and an new application was filed pursuant to section 64. On the same date a motion was filed requesting disposition of the application by way of the consent order provisions contained in subparagraph 64(f)(iii)(b) and/or section 77. On November 27, 1986, the request for the issuance of a consent order was denied. An appeal filed by the Director was subsequently abandoned.

APPENDIX IV

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Pyramid selling scheme (Food supplements, cleaning and personal care products)	Shaklee Canada Inc. (Edmonton, Alberta)	Proceedings were instituted on November 14, 1980, in Edmonton, Alberta, under subsection 30(2) for an Order of Prohibition. On February 16, 1981, the Order was refused by the Federal Court. On May 9, 1985, an appeal by the Crown was allowed and an Order of Prohibition was granted. Under appeal by the accused.
False or misleading representation in a material respect (Gas saving seminar)	Thomas James Scott and James Lowry (Calgary, Alberta)	One charge was laid on October 28, 1981, under paragraph 36(1)(a). On November 6, 1981, the charge was withdrawn and replaced by another charge under the same paragraph.
False or misleading representation in a material respect (Photo supplies)	Westfair Foods Ltd., carrying on business as Super Valu (Saskatoon, Saskatchewan)	Two charges were laid on August 30, 1983, under paragraph 36(1)(a). On February 16, 1984, the accused was acquitted. On January 31, 1985, an appeal by the Crown was dismissed. Under further appeal by the Crown.
False or misleading representation in a material respect (Gas saving device)	Bernard Teixeira, carrying on business as Compagnie Internationale Globern (Valleyfield, Québec)	Three charges were laid on January 6, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas saving device)	Bernard Teixeira, carrying on business as Compagnie Internationale Globern (Valleyfield, Québec)	Three charges were laid on January 6, 1984, under paragraph 36(1)(b).
Representation without proper test (Trailer couplings)	Canadian Tire Corporation Limited and Algonquin Industries International Inc., carrying on business as Algonquin Mfg. Ltd. (Gloucester, Ottawa, Nepean, Ontario)	On April 18, 1984, seven charges were laid under paragraph 36(1)(b). The accused were charged jointly with respect to one charge. Canadian Tire Corporation Limited was charged solely with respect to two charges and Algonquin Industries International Inc. was charged solely with respect to four charges. The accused pleaded not guilty, but on November 5, 1985, Algonquin Industries International Inc. was convicted on four charges and Canadian Tire Corporation Limited was convicted on two charges. On November 12, 1985, the accused were each fined $8 000, for a total fine of $16 000. Under appeal by Canadian Tire Corporation Limited.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Insurance)	The Independent Order of Foresters, Frank Degenaar and Garth Carter (Toronto, Ontario)	Thirteen charges were laid on June 14, 1984, under paragraph 36(1)(a). All the accused were charged jointly with respect to two charges. The Independent Order of Foresters and F. Degenaar were charged jointly with respect to three charges. The Independent Order and G. Carter were charged jointly with respect to three charges. The information was withdrawn and on March 22, 1985, fifteen new charges were laid under paragraph 36(1)(a). All the accused were charged jointly with respect to three charges. The Independent Order of Foresters and G. Carter were charged jointly with respect to three charges. The Independent Order of Foresters and F. Dagenaar were charged jointly with respect to four charges. The Independent Order of Foresters was charged solely with respect to five charges. On June 7, 1985, F. Dagenaar and G. Carter were acquitted of all charges. On January 13, 1987, the Independent Order of Foresters was acquitted of all charges. Under appeal by the Crown.
False or misleading representation in a material respect (Books)	Postal Promotions Limited, carrying on business as Halbert's (Nepean, Don Mills, Ontario)	Three charges were laid on November 6, 1984, under paragraph 36(1)(a). The accused pleaded not guilty but was convicted on December 6, 1985, and fined $3 000 on each charge, for a total fine of $9 000. An appeal by the accused was allowed on July 28, 1986. Under further appeal by the Crown.
False or misleading representation in a material respect (Jewellery)	Importateur E. Lavoie Inc., carrying on business as Lavoie Importateur (Jonquière, Québec)	One charge was laid on February 12, 1985, under paragraph 36(1)(a).
Representation without proper test (Slimming clinic)	Big Mac Investments Ltd., Arla McDonell and Gary Gordon McDonell carrying on business as Slim-Tone Clinique (Winnipeg, Manitoba)	Two charges were laid on March 26, 1985, under paragraph 36(1)(b).
Non-availability (Air transportation)	Air Canada (Toronto, Ontario)	Three charges were laid on March 29, 1985, under subsection 37(2). The information was withdrawn and on May 22, 1985, a new information was laid under the same subsection. On March 24, 1986, the accused was acquitted. Under appeal by the Crown.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Recreation facilities)	Club Mont Ste-Anne Inc. (Beaupré, Québec)	Three charges were laid on May 16, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Employment opportunity)	566230 Ontario Limited, carrying on business as C.M.I., 491538 Ontario Limited, carrying on business as Canadian Merchandising International, Eric Bresler and Daniel Robert Crothers (Toronto, Ontario)	Eighteen charges were laid on June 6, 1985, under paragraph 36(1)(a). One charge was also laid against the two individual accused, under paragraph 423(1)(d) of the Criminal Code, alleging the accused had conspired to commit an offence contrary to subsection 36(5) of the Act.
False or misleading representation in a material respect (Motor vehicle repairs)	Birchcliff Lincoln Mercury Sales Limited (Scarborough, Ontario)	Three charges were laid on June 20, 1985, under paragraph 36(1)(a). The accused pleaded not guilty, but on May 1, 1986, was convicted and given a suspended sentence. The accused appealed against conviction, and the Crown appealed against sentence. On November 13, 1986, the accused's appeal was allowed and the accused was acquitted. Under further appeal by the Crown.
False or misleading representation in a material respect (Remanufactured engines)	Canadian Tire Corporation, Limited and CanTire Products Limited (Winnipeg, Manitoba)	Two charges were laid on July 16, 1985, under paragraph 36(1)(a). Both accused pleaded not guilty. On July 9, 1986, Canadian Tire Corporation Limited was convicted of both charges, and CanTire Products Limited was acquitted of both charges. On August 29, 1986, Canadian Tire Corporation Limited was fined $75 000 on the first charge and $25 000 on the second charge, for a total fine of $100 000. Under appeal by the accused.
False or misleading representation in a material respect (Vacation package)	Carousel Travel 1982 Inc., Robert Niddery, Kenneth Gertner, Enrique Avila, Victor Palermo, Dolores Maher, and 506223 Ontario Inc., carrying on business as Solar Sales & Management Consultants (Toronto, Ontario)	Two charges were laid on July 17, 1985, under paragraph 36(1)(a). The accused were jointly charged with respect to one charge and Carousel Travel Inc., 506223 Ontario Inc., Kenneth Gertner, Victor Palermo and Robert Niddery were jointly charged with respect to the additional charge.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Furniture)	Combined Furniture Warehouse Sales Limited, Robert Young and Joseph Vizzari (Hamilton, Ontario)	Eight charges were laid on July 29, 1985, under paragraph 36(1)(a). All the accused were jointly charged with respect to four charges, and the corporate accused and R. Young were jointly charged with respect to four additional charges. R. Young pleaded not guilty but on June 24, 1986, was convicted on five charges and fined $1 000 on each charge, for a total fine of $5 000. The remaining charges against R. Young and all charges against J. Vizzari were dismissed. The charges against the corporate accused were withdrawn. Under appeal by the accused.
False or misleading representation in a material respect (Employment opportunity)	J. Hickman Investments Ltd., carrying on business as Capital Kirby (Ottawa) (Ottawa, Ontario)	One charge was laid on August 12, 1985, under paragraph 36(1)(a). On July 16, 1986, the accused was acquitted. Under appeal by the Crown.
False or misleading representation in a material respect (Fitness club memberships)	Super Fitness of Rexdale Inc., Super Fitness Centres Inc., carrying on business as Super Fitness, and Kenneth Reginald Wheeler (Toronto, Ontario)	Twenty-five charges were laid on September 20, 1985, under paragraph 36(1)(a). Super Fitness Centres Inc. and Kenneth Reginald Wheeler were jointly charged with respect to twenty-two charges and all three accused were jointly charged with respect to three additional charges. On September 25, 1986, the accused were acquitted. Under appeal by the Crown.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Automobiles)	Chrysler Canada Ltd. — Chrysler Canada Ltée, Paul Willison Limited, Ontario Chrysler (1977) Ltd., Raceway Plymouth Chrysler Ltd., Craig Hind Dodge Chrysler Ltd., Scarborotown Dodge Chrysler Ltd., Agincourt Chrysler Plymouth Motors Inc., Jim Davidson Holdings Limited, Jack Wood's Eastway Plymouth Chrysler Limited, Don Robertson Chrysler-Dodge Limited, Peel Chrysler Plymouth Incorporated, Cooksville Dodge Chrysler Inc., Sorenson Chrysler Plymouth Inc., Sevenview Plymouth Chrysler Ltd., Downsview Chrysler Plymouth (1964) Ltd., Mills and Hadwin Limited, Willowdale Dodge Chrysler Limited, Woodbridge Motors Limited, Active Motors Limited, West End Chrysler Dodge (1971) Limited, 546802 Ontario Inc., Islington Chrysler Plymouth (1963) Limited, Erin Dodge Chrysler Ltd., Georgetown Chrysler Ltd. (Toronto, Ontario)	One charge was laid on October 3, 1985, under paragraph 36(1)(a). On June 2, 1986, the charge against all the accused except Chrysler Canada Ltd. — Chrysler Canada Ltée and Paul Willison Limited was withdrawn. Paul Willison pleaded not guilty, but was convicted on September 24, 1986, and sentenced on January 4, 1987, to a fine of $6 000. The charge against Chrysler Canada Ltd. — Chrysler Canada Ltée remains outstanding. Under appeal by Paul Willison Limited.
False or misleading representation in a material respect (Jewellery)	Giftwares Wholesale Co. Ltd., carrying on business as Jewellery Distributors Co. of Canada and Wholesale Jewellers (Winnipeg, Manitoba)	One charge was laid on October 31, 1985, under paragraph 36(1)(a).
Misleading price representation (Jewellery)	Giftwares Wholesale Co. Ltd., carrying on business as Jewellery Distributors Co. of Canada and Wholesale Jewellers (Winnipeg, Manitoba)	Three charges were laid on October 31, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Tires)	Les Pneus Marquis Ltée and Richard St-Onge (Rimouski, Québec)	Ten charges were laid on November 8, 1985, under paragraph 36(1)(a).
Misleading price representation (Tires)	Les Pneus Marquis Ltée and Richard St-Onge (Rimouski, Québec)	Ten charges were laid on November 8, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Home vacuum systems)	Beam of Canada Inc. (Oakville, Ontario)	Two charges are laid on November 13, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Employment opportunity)	136143 Canada Limited, carrying on business as Wholesale Warehousing Industries (Dartmouth, Nova Scotia)	Eight charges were laid on November 27, 1985, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading respresentation in a material respect (Glass cleaner)	Hern Corp. (St. John's, Newfoundland)	One charge was laid on December 6, 1985, under paragraph 36(1)(a). The accused pleaded guilty, and on May 29, 1986, was convicted and fined $3 000. Under appeal by the accused.
False or misleading representation in a material respect (Fur coats)	Wendelyn Textiles & Properties Limited, carrying on business as Alan Cherry, Alan Cherry Enterprises Limited, Alan Cherry and Steven LeVine (Toronto, Ontario)	Seven charges were laid on January 3, 1986, under paragraph 36(1)(a) against all of the accused except Steven LeVine, who was charged with respect to six of the charges only.
Misleading price representation (Fur coats)	Wendelyn Textiles & Properties Limited, carrying on business as Alan Cherry, Alan Cherry Enterprises Limited, Alan Cherry and Steven LeVine (Toronto, Ontario)	One charge was laid on January 3, 1986, under paragraph 36(1)(d).
Promotional contest (Fur coats)	Wendelyn Textiles & Properties Limited, carrying on business as Alan Cherry, Alan Cherry Enterprises Limited, Alan Cherry and Steven LeVine (Toronto, Ontario)	One charge was laid on January 3, 1986, under section 37.2.
False or misleading representation in a material respect (Memberships)	Fairview Racquet Sports Limited and Ergometrics Consulting Inc. (Burlington, Ontario)	One charge was laid on January 14, 1986, under paragraph 36(1)(a). On July 11, both accused were acquitted. Under appeal by the Crown.
False or misleading representation in a material respect (Stereo speakers)	471451 Ontario Limited, carrying on business as Dana Trading Company, David Kleiner and David Samuel (Toronto, Ontario)	Twelve charges were laid on March 26, 1986, under paragraph 36(1)(a).
Representation without proper test (Stereo speakers)	471451 Ontario Limited, carrying on business as Dana Trading Company, David Kleiner and David Samuel (Toronto, Ontario)	Twelve charges were laid on March 26, 1986, under paragraph 36(1)(b).
False or misleading representation in a material respect (Tour packages)	314347 Ontario Limited, carrying on business as Talk Travel & Tours, and Larry Kleinmintz (Toronto, Ottawa, Ontario)	Five charges were laid on March 27, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Computers)	Commodore Business Machines Limited (Toronto, Ontario)	One charge was laid on April 1, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Video cassette recorders)	95093 Canada Inc., carrying on business as Wackey Wheatley's TV and Stereo (Mount Pearl, Newfoundland)	Two charges were laid on April 18, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Electrical and household appliances, toys)	Peter James Bartram, carrying on business as Anglo Canadian Warehouses (Hamilton, Mississauga, Oakville, Bowmanville, Toronto, Ontario)	Seven charges were laid on May 14, 1986, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Non-availability (Electrical household appliances, toys)	Peter James Bartram, carrying on business as Anglo Canadian Warehouses (Hamilton, Mississauga, Oakville, Bowmanville, Toronto, Ontario)	Seven charges were laid on May 14, 1986, under subsection 37(2).
False or misleading representation in a material respect (Vertical blinds)	Romuald Turgeon & Fils Inc. (Rimouski, Québec)	One charge was laid on May 14, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Blinds)	Boutique Evolution Décor Inc. (Rimouski, Québec)	Two charges were laid on May 14, 1986, under paragraph 36(1)(a).
Misleading price representation (Blinds)	Boutique Evolution Décor Inc. (Rimouski, Québec)	Two charges were laid on May 14, 1986, under paragraph 36(1)(d).
False or misleading representation in a material respect (Fur garments)	Furs by Michel Ltd. and Mike E. Sommer Jr. (Calgary, Alberta)	Fifteen charges were laid against the corporate accused on May 15, 1986, under paragraph 36(1)(a). A second information containing seven charges was laid against the individual accused on the same date.
Misleading price representation (Fur garments)	Furs by Michel Ltd., and Mike Sommer Jr. (Calgary, Alberta)	Twelve charges were laid against the corporate accused on May 15, 1986, under paragraph 36(1)(d). A second Information containing seven charges was laid against the individual accused on the same date
False or misleading representation in a material respect (Security and alarm systems and services)	D.E.S. Security Systems Corporation and Peter Di Murro (Sarnia, Ontario)	Two informations containing forty-four charges were laid on May 15, 1986, under paragraph 36(1)(a). One information containing twenty-two charges was laid against D.E.S. Security Systems Corporation. The other information, also containing twenty-two charges, was laid against P. Di Murro.
False or misleading representation in a material respect (Diamond ring promotion)	Muralex Distributions Inc., Les Distributions Muralex Inc., carrying on business as Orford Collection, and Pierre Benoit (Vancouver, and elsewhere in the province of British Columbia)	One charge was laid on May 23, 1986, under paragraph 36(1)(a). The accused pleaded not guilty but were convicted on February 27, 1987. The case was put over for sentencing.
False or misleading representation in a material respect (Slimming clinic)	Big Mac Investments Ltd., Arla McDonell and Gary Gordon McDonell (Winnipeg, Manitoba)	Two charges were laid on May 30, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Promotional contest)	132131 Canada Inc., carrying on business as Promotions Voyage Bonis, Antonio Soccio, Marcel Prévost and Yvon Parisée (Trois-Rivières, Cap-de-la Madeleine, and Ste-Marthe du Cap-de-la Madeleine, Québec)	Eight charges were laid on June 12, 1986, under paragraph 36(1)(a). 132131 Canada Inc. and A. Soccio were charges jointly with respect to four charges. 132131 Canada Inc. and M. Prévost were charged jointly with respect to one charge. 132131 Canada Inc. and Y. Parisée were charged jointly with respect to three charges.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Automobiles)	Cruickshank Motors Limited (Toronto, Ontario)	Three charges were laid on June 18, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Video and audio products)	Video Source Direct Inc., Philips Electronic Ltd. — Philips Electronique Ltée, and Stephen Taylor (Toronto, Ontario)	Two charges were laid on June 25, 1986, under paragraph 36(1)(a).
Non-availability (Video and audio products)	Video Source Direct Inc., Philips Electronic Ltd. — Philips Electronique Ltée, and Stephen Taylor (Toronto, Ontario)	Six charges were laid on June 25, 1986, under subsection 37(2).
Sale above advertised price (Video and audio products)	Video Source Direct Inc., Philips Electronic Ltd. — Philips Electronique Ltée, and Stephen Taylor (Toronto, Ontario)	One charge was laid on June 25, 1986, under section 37.1.
Pyramid selling scheme (Miscellaneous items)	CLP Canmarket Lifestyle Products Corporation and R. Hugh Thorsten (Winnipeg, Manitoba)	Two charges were laid on July 4, 1986, under section 36.3.
False or misleading representation in a material respect (Gas saving device)	A.B.C. Mileage Maker Industries Inc. and Derek L. Lucas (Coquitlam, Burnaby, British Columbia)	Twelve charges were laid on July 11, 1986, under paragraph 36(1)(a).
Representation without proper test (Gas saving device)	A.B.C. Mileage Maker Industries Inc. and Derek L. Lucas (Coquitlam, Burnaby, British Columbia)	Twelve charges were laid on July 11, 1986, under paragraph 36(1)(b).
False or misleading representation in a material respect (Rust prevention device)	Conroy Electronics Inc. (Caledonia, Ontario)	One charge was laid on July 25, 1986, under paragraph 36(1)(a).
Representation without proper test (Rust prevention device)	Conroy Electronics Inc. (Caledonia, Ontario)	One charge was laid on July 25, 1986, under paragraph 36(1)(b).
False or misleading representation in a material respect (Electronic products, household furnishings and appliances)	Pamley Enterprises Ltd., carrying on business as Bianco's Audio, House of Broadloom Limited, Bouchard Homes Furnishings Ltd., carrying on business as Sudbury Appliances, 497045 Ontario Inc., carrying on business as Furniture Unlimited and as Mattress Factory Outlet, Philip Stewart, Guy R. Pellerin and Richard Bouchard (Sudbury, Ontario)	Five charges were laid on July 28, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Stereo cassette players)	95093 Canada Inc., carrying on business as Wacky Wheatley's TV and Stereo (St.John's, Newfoundland)	Two charges were laid on July 31, 1986, under paragraph 36(1)(a).
Promotional contest (Audio and electronic equipment)	Alexander Romanov and Alpine Electronics of Canada Inc. (Markham, Ontario)	Three charges were laid on August 7, 1986, under section 37.2.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Jewellery)	Stephen William Joseph Holloway and Holloway Jewellers Limited, carrying on business as Holloway Diamond Merchants (London, Ontario)	Seven charges were laid on August 11, 1986, under paragraph 36(1)(a). The corporate accused pleaded guilty to three charges, and on March 6, 1987, was convicted and fined $3 000 each on two charges and $4 000 on the remaining charge for a total fine of $10 000. The remaining charges against the corporate accused were withdrawn. The charges against the individual accused remain outstanding.
False or misleading representation in a material respect (Condominium units)	The Harbour Club (Thornbury) Inc. and David Ouellet (Toronto, Ontario)	One charge was laid on August 13, 1986, under paragraph 36(1)(a). On February 18, 1987, the accused were acquitted. Under appeal by the Crown.
Misleading price representation (Windows, doors)	Schurman Enterprises Ltd., carrying on business as Schurman Supply (Charlottetown, Prince Edward Island)	One charge was laid on August 14, 1986, under paragraph 36(1)(d). On September 9, 1986, the accused pleaded guilty, and was convicted and fined $500. Under appeal by the Crown.
False or misleading representation in a material respect (Motorcycles)	600548 Ontario Limited, carrying on business as Honda Cycle Sports Toronto, and 570039 Ontario Ltd., carrying on business as Yamaha Toronto and Toronto Yamaha (Toronto, Ontario)	Two informations containing fourteen charges were laid on August 14, 1986, under paragraph 36(1)(a). One information containing eight charges was laid against 600548 Ontario Limited. The other information, also containing six charges, was laid against 570039 Ontario Ltd.
Misleading price representation (Motorcycles)	600548 Ontario Limited, carrying on business as Honda Cycle Sports Toronto, and 570039 Ontario Ltd., carrying on business as Yamaha Toronto and Toronto Yamaha (Toronto, Ontario)	Two informations containing six charges were laid on August 14, 1986, under paragraph 36(1)(d). One information containing three charges was laid against 600548 Ontario Limited. The other information also containing three charges was laid against 570039 Ontario Ltd.
False or misleading representation in a material respect (Fitness club memberships)	Fitopco Incorporated, 508453 Ontario Ltd., 508450 Ontario Ltd., 508451 Ontario Ltd., all carrying on business as Catherine's Lady Fitness, Catherine Cole and Ron Krayewski (Hamilton, Ontario)	Fourteen charges were laid on August 27, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Gas saving device)	Louis McInnis and M & L Oil Co. Ltd., carrying on business as Newman Automotive (Vancouver, British Columbia)	Three charges were laid on September 3, 1986, under paragraph 36(1)(a). On February 13, 1987, the accused were acquitted of all charges. Under appeal by the Crown.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Gas saving device)	Louis McInnis and M & L Oil Co. Ltd., carrying on business as Newman Automotive (Vancouver, British Columbia)	Three charges were laid on September 3, 1986, under paragraph 36(1)(d). On February 13, 1987, the accused were acquitted of all charges. Under appeal by the Crown.
Misleading price representation (Pianos)	The T. Eaton Company Limited (Toronto, Ontario)	One charge was laid on September 5, 1986, under paragraph 36(1)(d).
False or misleading representation in a material respect (Tablecloths and carpets)	Les Magasins D.J. Shiller Inc. (Montréal, Québec)	Two charges were laid on September 11, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Waterbeds)	Windsor House of Waterbeds Inc., carrying on business as House of Waterbeds; and Timothy Critchlon (Leamington, Ontario)	One charge was laid on September 22, 1986, under paragraph 36(1)(a). On January 29, 1987 an additional charge was laid under the same paragraph.
Promotional contest (Waterbeds)	Windsor House of Waterbeds Inc., carrying on business as House of Waterbeds; and Timothy Critchlon (Leamington, Ontario)	One charge was laid on September 22, 1986, under section 37.2.
False or misleading representation in a material respect (Carpets)	Carpita Corporation, carrying on business as Factory Carpet Outlet (Regina, Saskatchewan)	Seven charges were laid on September 24, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Jewellery)	Larry Gluckstein and Sydney Lanys, carrying on business as Kenton Liquidators (Toronto, Ontario)	Thirty-seven charges were laid on September 30, 1986, under paragraph 36(1)(a).
Promotional contest (Festival)	Tom Kourtesis (Toronto, Ontario)	One charge was laid on October 29, 1986, under section 37.2.
Pyramid selling scheme (Gold wafers)	Itec Gold Marketing Inc., John Holuk and Harold Ferster (Edmonton, Alberta)	One charge was laid on November 10, 1986, under section 36.3.
False or misleading representation in a material respect (Central vacuum systems)	Paradoc Investments Inc., carrying on business as Centra Clean Canada, and Arman Azadi (Markham, Ontario)	Eleven charges were laid on November 20, 1986, under paragraph 36(1)(a).
Misleading price representation (Central vacuum systems)	Parodoc Investments Inc., carrying on business as Centra Clean Canada, and Arman Azadi (Markham, Ontario)	Three charges were laid on November 20, 1986, under paragraph 36(1)(d).
False or misleading representation in a material respect (Video cassette recorders)	Torlawn Developments Limited, carrying on business as Action Video Audio, Andy Redmond and Christopher Ursini (London, Ontario)	Twenty-six charges were laid on November 20, 1986, under paragraph 36(1)(a).
Sale above advertised price (Video cassette recorders)	Torlawn Developments Limited, carrying business as Action Video Audio, Andy Redmond and Christopher Ursini (London, Ontario)	One charge was laid on November 20, 1986, under section 37.1.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Furniture)	Greco-Latino Furniture & Appliances Ltd., carrying on business as Cross Canada Liquidators, and George Pozios (Hamilton, Ontario)	Six charges were laid on November 28, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Vinyl and leather repair businesses)	Tentan Vinyl Inc., Dennis Kwasnicki and Dan Ryall (Toronto, Ontario)	Two charges were laid on December 5, 1986, under paragraph 36(1)(a).
Pyramid selling scheme (Dietary supplements)	Herbalife of Canada Ltd. (Edmonton, Alberta)	One charge was laid on December 15, 1986, under section 36.3.
Misleading price representation (Books)	W.H. Smith Ltd. and W.H. Smith Canada Ltd. (Markham, Ontario)	Twenty-three charges were laid on December 16, 1986, under paragraph 36(1)(d).
False or misleading representation in a material respect (Jewellery)	Bijouterie J.G.L. Inc. (Montréal, Québec)	One charge was laid on December 17, 1986, under paragraph 36(1)(a).
Misleading price representation (Jewellery)	Bijouterie J.G.L. Inc. (Montréal, Québec)	Two charges were laid on December 17, 1986, under paragraph 36(1)(d).
False or misleading representation in a material respect (Furniture)	Emix Ltd., carrying on business as The Furniture Mall and Interhome (Toronto, Ontario)	Forty-eight charges were laid on December 22, 1986, under paragraph 36(1)(a).
False or misleading representation in a material respect (Automobiles)	W.A. McDowell (Toronto) Limited, carrying on business as McDowell Motors, and Ray Anskis (Toronto, Ontario)	Three charges were laid on December 30, 1986, under paragraph 36(1)(a).
Non-availability (Automobiles)	W.A. McDowell (Toronto) Limited, carrying on business as McDowell Motors (Toronto, Ontario)	Three charges were laid on December 30, 1986, under subsection 37(2)
False or misleading representation in a material respect (Cassette car stereos)	Majestic Sound Warehouse Limited (Toronto, Ontario)	Two charges were laid on January 7, 1987, under paragraph 36(1)(a).
Non-availability (Cassette car stereos and video tapes)	Majestic Sound Warehouse Limited (Toronto, Ontario)	Two charges were laid on January 7, 1987, under subsection 37(2).
False or misleading representation in a material respect (Video games, camera equipment and luggage)	Incentive Promotions Inc. and Allan Diamond (Montréal, Québec)	Four charges were laid on January 8, 1987, under paragraph 36(1)(a).
Promotional contest (Various)	Incentive Promotions Inc. and Allan Diamond (Montreal, Quebec)	Three charges were laid on January 8, 1987, under section 37(2).
False or misleading representation in a material respect (Mufflers)	Zoro Discount Muffler Ltd., carrying on business as Zoro Discount Muffler (Hamilton, Ontario)	Seven charges were laid on January 19, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Lighting fixtures)	Astra-Lite Studio Limited (Halifax, Nova Scotia)	Two charges were laid on January 27, 1987, under paragraph 36(1)(a).
Misleading price representation (Lighting fixtures)	Astra-Lite Studio Limited (Halifax, Nova Scotia)	Two charges were laid on January 27, 1987, under paragraph 36(1)(d).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Television and video cassette recorders)	Audio Perfection Inc. (Sherbrooke, Québec)	Six charges were laid on January 27, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Books)	R.L. Polk & Co. Ltd., Douglas Haslinger and Ron Adamson (Calgary, Alberta; Halifax, Nova Scotia; Vancouver, British Columbia; Toronto, Thunder Bay and Niagara-on-the-Lake, Ontario; Leduc, Québec)	Seven charges were laid on January 28, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Fitness club memberships)	David Fisher and Woodlawn Fitness Centre Limited (Dartmouth, Nova Scotia)	Two informations containing eight charges were laid on February 2, 1987, under paragraph 36(1)(a). One information, containing four charges, was laid against the corporate accused, and the other information, also containing four charges, was laid against the individual accused. The corporate accused pleaded guilty to three charges, and on March 9, 1987, was convicted and fined $1 000 on each charge, for a total fine of $3 000. The remaining charge against the corporate accused was withdrawn. Charges against the individual accused remain outstanding.
False or misleading representation in a material respect (Automobiles)	A.E. Fowles 1986, carrying on business as MacLellan Lincoln Mercury Sales Limited (Dartmouth, Nova Scotia)	Two charges were laid on February 17, 1987, under paragraph 36(1)(a).
Misleading price representation (Automobiles)	A.E. Fowles 1986, carrying on business as MacLellan Lincoln Mercury Sales Limited (Dartmouth, Nova Scotia)	Two charges were laid on February 17, 1987, under paragraph 36(1)(d).
False or misleading representation in a material respect (Jewellery)	Ani Jewellery Limited and Gem Scan International Inc. (Ottawa, Ontario)	Two charges were laid on February 18, 1987, under paragraph 36(1)(a). The accused were charged jointly with respect to one charge, and Ani Jewellery Limited was charged solely with respect to an additional charge.
Misleading price representation (Jewellery)	Ani Jewellery Limited (Ottawa, Ontario)	One charge was laid on February 18, 1987, under paragraph 36(1)(d).
False or misleading representation in a material respect (Gym memberships)	Roman Walter Bobalek, carrying on business as Diamond Gyms (St. Catharines, Ontario)	Two charges were laid on February 20, 1987, under paragraph 36(1)(a).
Promotional contest (Gym memberships)	Roman Walter Bobalek, carrying on business as Diamond Gyms (St. Catharines, Ontario)	Two charges were laid on February 20, 1987, under section 37.2.
False or misleading representation in a material respect (Gas saving device)	Platinum Fuelsaver Corporation and Michael J. Bailey (Jarvis, Ontario)	One charge was laid on February 23, 1987, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Gas saving device)	Platinum Fuelsaver Corporation and Michael J. Bailey (Jarvis, Ontario)	Two charges were laid on February 23, 1987, under paragraph 36(1)(b).
False or misleading representation in a material respect (Real estate sales service)	Century 21 Capital Equities Limited (Yarmouth, Nova Scotia)	Two charges were laid on February 24, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Motor vehicles)	Steel City Chrysler Plymouth Limited (Hamilton, Ontario)	One charge was laid on February 26, 1987, under paragraph 36(1)(a).
Sale above advertised price (Motor vehicles)	Steel City Chrysler Plymouth Limited (Hamilton, Ontario)	One charge was laid on February 26, 1987, under section 37.1.
False or misleading representation in a material respect (Books)	William Russell Hamilton, carrying on business as H.B. Enterprises (Saskatoon, Regina, Saskatchewan; Owen Sound, Kitchener-Waterloo, London, St. Catharines, Cambridge, Toronto, Ottawa, Ontario, Winnipeg, Manitoba, Halifax, Nova Scotia, Edmonton, Alberta)	Fourteen charges were laid on February 27, 1987, under paragraph 36(1)(a).
Representation without proper test (Books)	William Russell Hamilton, carrying on business as H.B. Enterprises (Saskatoon, Regina, Saskatchewan, Owen Sound, Kitchener-Waterloo, London, St. Catharines, Cambridge, Toronto, Ottawa, Ontario, Edmonton, Alberta; Winnipeg, Manitoba; Halifax, Nova Scotia.)	Fourteen charges were laid on February 27, 1987, under paragraph 36(1)(b).
False or misleading representation in a material respect (Key-chains, key tags and pens)	Telecan Advertising Industries Inc., Telecan Publicité Inc., Jeffrey Baron and Daniel Planetta (Qualicum Beach, Castlegar, Baldonnel, Port Coquitlam, Maple Ridge, Nelson, Comox and Tahsis, British Columbia)	Eight charges were laid on March 5, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Groceries)	Atlantic Wholesalers Ltd. (Sackville, New Brunswick)	Three charges were laid on March 13, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Ceiling fans)	Fandango Ceiling Fans Ltd. (Calgary, Alberta)	One charge was laid on March 17, 1987, under paragraph 36(1)(a).
Non-availability (Ceiling fans)	Fandango Ceiling Fans Ltd. (Calgary, Alberta)	One charge was laid on March 17, 1987, under subsection 37(2).
False or misleading representation in a material respect (Land)	Timber Ridge Estates Ltd. and Peter Misko (Calgary, Alberta)	Fifteen charges were laid on March 27, 1987, under paragraph 36(1)(a).
False or misleading representation in a material respect (Audio equipment)	Stereo People of Canada Ltd. and Danny C. Leung (Vancouver, British Columbia)	Seven charges were laid on March 30, 1987, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Audio equipment)	Stereo People of Canada Ltd. and Danny C. Leung (Vancouver, British Columbia)	Nine charges were laid on March 30, 1987, under paragraph 36(1)(d).

APPENDIX V

Information program

Recent Publications of the Bureau of Competition Policy

Misleading Advertising Bulletin (Published quarterly)

How to Avoid Misleading Advertising: Guidelines

Annual Report [of the] Director of Investigation and Research, Competition Act (for previous fiscal years)

Forums Addressed By the Director and Senior Staff of the Bureau of Competition Policy 1986/87*

C.S. Goldman

Canadian Bar Association — Business Law Section (Edmonton, Alberta)
Topic: The New Enforcement Program Under the Competition Act (S-86-50)*

Department of Justice — Seminar For Crown Prosecutors (Toronto, Ontario)
Topic: Procedural Aspects of the New Act.

Canadian Association of Members of Public Utilities Tribunal
(Saskatoon, Saskatchewan)
Topic: The Competition Act As It Relates to the Regulated Sector (S-86-45)*

Law Society of British Columbia — Continuing Legal - Education Program
(Vancouver, British Columbia)
Topic: New Developments In The Enforcement of the Act, Mergers

International Bar Association (New York, New York)
Topic: Mergers, Joint Ventures, and Notifiable Transactions (S-86-51)*

Law Society of Upper Canada/Canadian Bar Association (Ontario) (Toronto, Ontario)
Topic: New Developments in the Enforcement of Canadian Competition Law (S-86-46)*

Institute of International Research (Toronto, Ontario)
Topic: An Overview of the New Legislation

Ontario Legislative Assembly, Standing Committee on Finance and Economic Affairs
(Toronto, Ontario)
Topic: Corporate Concentration in the Financial Services Sector in Ontario

Grocery Products Manufacturers Association (Toronto, Ontario)
Topic: The New Competition Legislation (S-86-47)*

Les Éditions Blais Conference on Competition Law (Montréal, Québec)
Topic: New Developments in the Enforcement of the Act (S-86-49)*

Department of Justice (Ottawa, Ontario)
Topic: Overview of the New Act

University of Toronto Law and Economics Program/McCarthy & McCarthy
(Toronto, Ontario)
Topic: Mergers and Notifiable Transactions (S-86-60)*

The Canadian Chamber of Commerce (Ottawa, Ontario)
Topic: The New Competition Act

The Halifax Board of Trade (Halifax, Nova Scotia)
Topic: New Developments in the Enforcement of the Act

The Canadian Manufacturers Association (Ottawa, Ontario)
Topic: New Developments in the Enforcement of the Act

The Conference Board of Canada (Toronto, Ontario)
Topic: Corporate Restructuring and Repositioning to Ensure Competitiveness

National Conference on Mergers, Corporate Concentration and Corporate Power in Canada (Montréal, Québec)
Topic: Corporate Concentration and the Competition Act (S-87-9)*

Gordon Group Conference on Competition Law (Toronto, Ontario)
Topic: The New Competition Act (S-87-11)*

Senior staff

Courtice High School of Ottawa (Hull, Québec)
Topic: Competition in the Canadian Market place

National Conference of the Purchasing Management Association of Canada (Ottawa, Ontario)
Topic: Bid-rigging

Allied Beauty Association (Ottawa, Ontario)
Topic: Price maintenance, Price Discrimination and Refusal to Supply

Purchasing Management Association of Canada — B.C. District (Vancouver, British Columbia)
Topic: Procurement Practices and Bid-rigging

National Automotive Trades Association (Vancouver, British Columbia)
Topic: The New Competition Act

Ontario Refrigeration and Air Conditioning Contractors Association (Toronto, Ontario)
Topic: How the Bureau Handles Merger Cases

Canadian Boiler Society (Stratford, Ontario)
Topic: Industry Associations and the Conspiracy Provision of the Act

Institute of International Research (Toronto, Ontario)
Topic: Investigatory Powers Under the Competition Act

Dept. of Supply and Services, Professional Development Group (Hull, Québec)
Topic: Government Procurement Practices and Bid-rigging

McCarthy & McCarthy/University of Toronto Law and Economics Program (Toronto, Ontario)
Topic: The Abuse of Dominant Position Provision

Maytag Company Limited (Montréal, Québec).
Topic: Price Maintenance

Forest Sector Advisory Council (Ottawa, Ontario)
Topic: The New Competition Act

Purchasing Management Association of Canada — Montréal, District (Montréal, Québec)
Topic: Procurement Practices and Bid-rigging

Financial Management Institute (Ottawa, Ontario)
Topic: Bid-rigging

VMR Corporate Planning Group (Toronto, Ontario)
Topic: The New Competition Act

Purchasing Management Association of Canada — North Vancouver Island Branch (Nanaimo, British Columbia)
Topic: Procurement Practices and Bid-rigging

Canadian Bar Association of Canada — Ontario (Toronto, Ontario)
Topic: The Enforcement of Non-Criminal Trade Practices

Purchasing Management Association of Canada — Victoria Chapter (Victoria, British Columbia)
Topic: Procurement Practices and Bid-rigging

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* Denotes those addresses for which a written paper is available to the public in both official languages

Canadian Forest Products Ltd. (Vancouver, British Columbia)
Topic: Procurement Practices

Forest Sector Advisory Council (Toronto, Ontario)
Topic: The New Legislation

Western Mining Purchasing Managers Group (Vancouver, British Columbia)
Topic: Bid-rigging

Purchasing Management Association of Canada Brantford-Norfolk District (Brantford, Ontario)
Topic: Bid-rigging

Écoles des Hautes Études Commerciales (Montréal, Québec)
Topic: The New Competition Act

Consumer Electronics Marketers of Canada (Toronto, Ontario)
Topic: Refusal to Supply and the Rights of Suppliers

APPENDIX VI

Administration and Organization of the Bureau of Competition Policy

1. Staff

On April 29, 1986, Calvin S. Goldman was appointed Director of Investigation and Research and Assistant Deputy Minister, Bureau of Competition Policy. Michael P. O'Farrell, who had preceded Mr. Goldman, was appointed Deputy Director, on the same date. A second Deputy-Director, Howard I. Wetston, was appointed on November 27, 1986.

There are five enforcement Branches, each under a Director, as follows:

Resources	W.D. Critchley (Acting)
Services	I.R. Nielsen-Jones*
Manufacturing	W.F. Lindsay*
Regulated Sector	H.S. Chandler (Acting)
Marketing Practices	K.G. Decker.

* Effective April 1, 1987

The Economic Analysis and Policy Evaluation Branch provides comprehensive research support to the Bureau and has the central role in strategic planning, international affairs and the general development of competition policy. M. Andrieu is the Director.

The Office of Enforcement Operations provides overall coordination and managerial support for the area of enforcement of the Act. The position of Coordinator is filled on an acting basis by P. Wagschal.

The Management Services section provides coordination and managerial support in planning, financial, personnel and administrative matters. J.J.D. Read is the Coordinator.

In order to effectively implement the new legislation, the Bureau has undertaken an internal redeployment of staff, effective April 1, 1987. The principal change to the existing structure will be the creation of a Merger Branch (the position of Branch Director to be filled on an interim basis by H.S. Chandler). It is anticipated that during 1987/88 the new organizational structure will be formally approved and implemented.

The authorized Bureau strength for 1986-87 was 258 person-years. Of these, 201 are in headquarters. The remaining 57 person-years comprise the field element of the Marketing Practices Branch, and one officer placed in the Vancouver office as a pilot project, responsible for non-marketing practices work. The Marketing Practices field component is under the direction of five regional managers; 51 investigators and support staff are located in Vancouver, Edmonton, Calgary, Winnipeg, London, Toronto, Hamilton, Hull, Montréal, Québec City, Dartmouth and St. John's.

The Director of Investigation and Research also received assistance from members of the departmental Legal Branch, who are lawyers from the Department of Justice. The Department of Justice is responsible for the conduct of prosecutions and other legal proceedings under the Act.

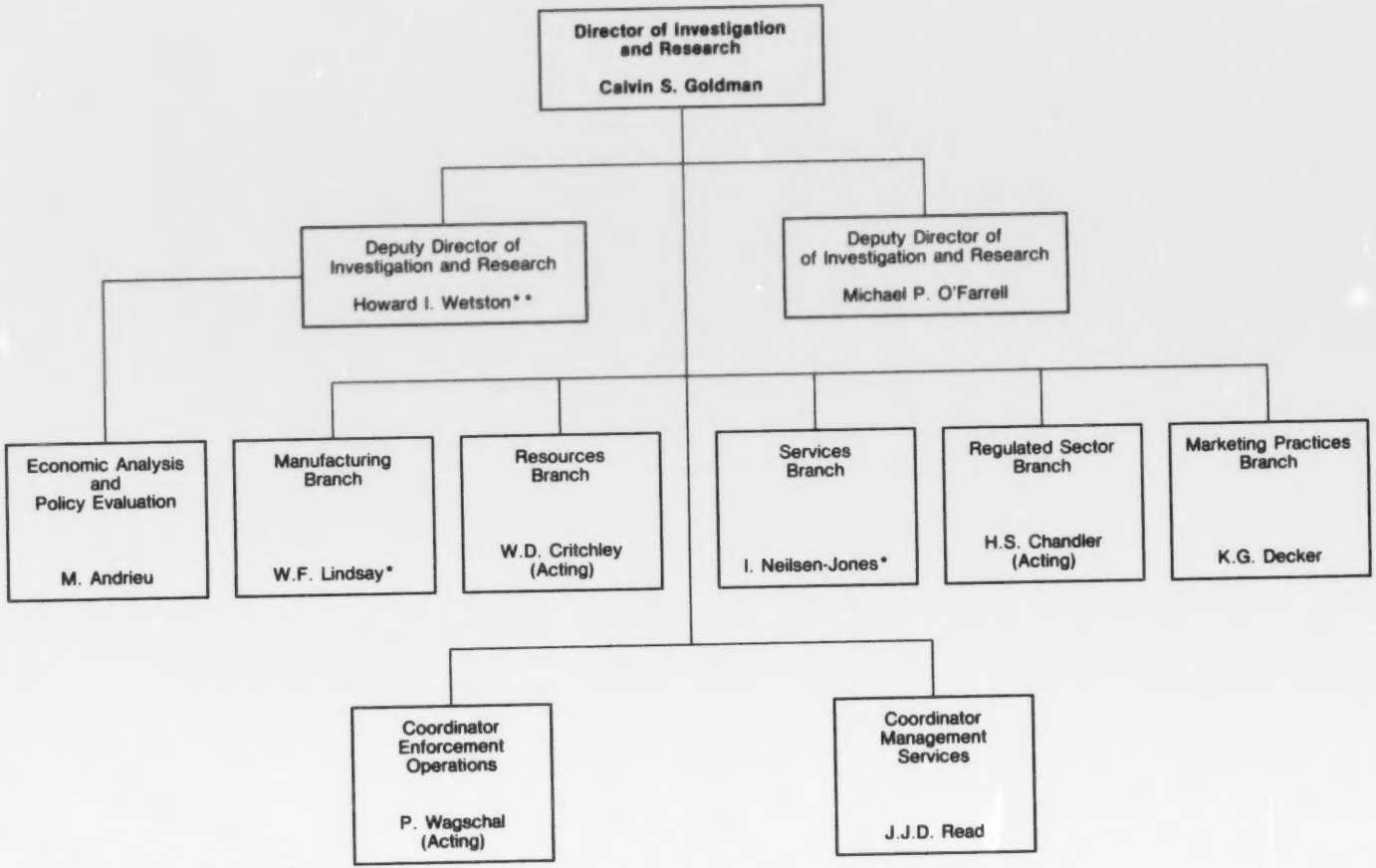
2. Finance

In 1986-87 the operating budget for the administration of the Bureau of Competition Policy was $14 572 000 of which $14 134 000 was spent.

The Bureau's major expenditure during the year was $10 480 000 for staff salaries and benefits, reflecting the fact that the Bureau is highly labour intensive. The Bureau incurred $2 047 257 in legal fees and disbursements in relation to its activities under the Act.

The Director is also charged with the administrative responsibility for collecting fines imposed by the courts. During 1986-87, a total of 84 fines were collected, with a value of $1 124 000, which was credited to the government's Consolidated Revenue Fund.

DETAILS OF ORGANIZATION
BUREAU OF COMPETITION POLICY



* Effective April 1, 1987
** appointed November 27, 1986

APPENDIX VII

Regional and District Offices

Any person wishing to obtain general information on the Act or an opinion under the program of compliance, or wishing to inform the Director of Investigation and Research of any matter that comes within the purview of the Act, can communicate with:

Office of Enforcement Operations
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
50 Victoria Street
Hull, Québec
K1A 0C9
Tel: 994-0798

For any matters pertaining to marketing practices, such persons may also communicate with the regional offices listed below:

1400-800 Burrard Street
VANCOUVER, British Columbia
V6Z 2H8
Tel: 666-5000

2919-5th Avenue N.E.
Bag 60, Station "J"
CALGARY, Alberta
T2A 6T8
Tel: 292-5608

Federal Building
451 Talbot Street
3rd Floor
LONDON, Ontario
N6A 5C9
Tel: 679-4119

50 Victoria Street
HULL, Québec
KIA 0C9
Tel: 997-4282

Guy Favreau Complex
200 Dorchester Blvd. W.
Suite 534, East Tower
MONTRÉAL, Québec
H2Z 1X4
Tel: 283-4571

Sir Humphrey Gilbert Building
165 Duckworth Street
5th Floor
ST. JOHN'S, Newfoundland
A1C 1G4
Tel: 772-5518

Oliver Building
10225-100th Avenue
1st Floor
EDMONTON, Alberta
T5J 0A1
Tel: 420-2489

260 St. Mary Avenue
Room 201, 2nd Floor
WINNIPEG, Manitoba
R3C 0M6
Tel: 949-5567

4900 Yonge Street
6th Floor
WILLOWDALE, Ontario
M2N 6B8
Tel: 224-4065

10 John Street South
6th Floor
HAMILTON, Ontario
L8N 4A7
Tel: 572-2873

410 Charest Blvd. East
Room 400
QUÉBEC, Québec
G1K 8G3
Tel: 648-3939

Windmill Place
1000 Windmill Road
Suite 1
DARTMOUTH, Nova Scotia
B3M 1L7
Tel: 426-7610

APPENDIX VIII

REVISED RECOMMENDATION OF THE COUNCIL [of the OECD]

concerning co-operation between Member countries on restrictive business practices affecting international trade (adopted by the Council at its 643rd Meeting on 21st May 1986)

THE COUNCIL,

Having regard to Article 5 b) of the Convention on the Organization for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 25th September 1979, concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade [C(79)154(Final)] which repealed and superseded the Recommendations of the Council of 5th October 1967 and of 3rd July 1973 on the same subject;

Having regard to the request made by the Council meeting at Ministerial level in May 1982 to the Committee of Experts on Restrictive Business Practices to undertake a review of the 1979 Council Recommendation [C/M(82)12 Part I (Final), items 114 and 115, paragraph 12 a)];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on the operation of the 1979 Council Recommendation during the period 1980 to mid-1985 [RBP(86)2(1st Revision), Part A];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on international co-operation in the collection of information for purposes of competition law enforcement and, in particular, the suggestion for action contained in that report (paragraphs 173 to 179);

Recognising that restrictive business practices may constitute an obstacle to the achievement of economic growth, trade expansion and other economic goals of Member countries such as the control of inflation;

Recognising that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective spheres of sovereignty of the countries concerned;

Recognising the need for Member countries to give effect to the principles of international law and comity and to use moderation and self-restraint in the interest of co-operation in the field of restrictive business practices;

Recognising that restrictive business practices investigations and proceedings by one Member country may, in certain cases, affect important interests of other Member countries;

Considering therefore that Member countries should co-operate in the implementation of their respective national legislation in order to combat the harmful effects of restrictive business practices;

Considering also that closer co-operation between Member countries is needed to deal effectively with restrictive business practices operated by enterprises situated in Member countries when they affect the interests of one or more other Member countries and have a harmful effect on international trade;

Considering moreover that closer co-operation between Member countries in the form of notification, exchange of information, co-ordination of action, consultation and conciliation, on a fully voluntary basis, should be encouraged, it being understood that such co-operation should not, in any way, be construed to affect the legal positions of Member countries with regard to questions of sovereignty, and in particular, the extra-territorial application of laws concerning restrictive business practices, as may arise;

APPENDIX VII

Regional and District Offices

Any person wishing to obtain general information on the Act or an opinion under the program of compliance, or wishing to inform the Director of Investigation and Research of any matter that comes within the purview of the Act, can communicate with:

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Bureau of Competition Policy
Consumer and Corporate Affairs Canada
50 Victoria Street
Hull, Québec
K1A 0C9
Tel: 994-0798

For any matters pertaining to marketing practices, such persons may also communicate with the regional offices listed below:

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CALGARY, Alberta
T2A 6T8
Tel: 292-5608

Federal Building
451 Talbot Street
3rd Floor
LONDON, Ontario
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Tel: 679-4119

50 Victoria Street
HULL, Québec
K1A 0C9
Tel: 997-4282

Guy Favreau Complex
200 Dorchester Blvd. W.
Suite 534, East Tower
MONTRÉAL, Québec
H2Z 1X4
Tel: 283-4571

Sir Humphrey Gilbert Building
165 Duckworth Street
5th Floor
ST. JOHN'S, Newfoundland
A1C 1G4
Tel: 772-5518

Oliver Building
10225-100th Avenue
1st Floor
EDMONTON, Alberta
T5J 0A1
Tel: 420-2489

260 St. Mary Avenue
Room 201, 2nd Floor
WINNIPEG, Manitoba
R3C 0M6
Tel: 949-5567

4900 Yonge Street
6th Floor
WILLOWDALE, Ontario
M2N 6B8
Tel: 224-4065

10 John Street South
6th Floor
HAMILTON, Ontario
L8N 4A7
Tel: 572-2873

410 Charest Blvd. East
Room 400
QUÉBEC, Québec
G1K 8G3
Tel: 648-3939

Windmill Place
1000 Windmill Road
Suite 1
DARTMOUTH, Nova Scotia
B3M 1L7
Tel: 426-7610

APPENDIX VIII

REVISED RECOMMENDATION OF THE COUNCIL [of the OECD]

concerning co-operation between Member countries on restrictive business practices affecting international trade (adopted by the Council at its 643rd Meeting on 21st May 1986)

THE COUNCIL,

Having regard to Article 5 b) of the Convention on the Organization for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 25th September 1979, concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade [C(79)154(Final)] which repealed and superseded the Recommendations of the Council of 5th October 1967 and of 3rd July 1973 on the same subject;

Having regard to the request made by the Council meeting at Ministerial level in May 1982 to the Committee of Experts on Restrictive Business Practices to undertake a review of the 1979 Council Recommendation [C/M(82)12 Part I (Final), items 114 and 115, paragraph 12 a)];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on the operation of the 1979 Council Recommendation during the period 1980 to mid-1985 [RBP(86)2(1st Revision), Part A];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on international co-operation in the collection of information for purposes of competition law enforcement and, in particular, the suggestion for action contained in that report (paragraphs 173 to 179);

Recognising that restrictive business practices may constitute an obstacle to the achievement of economic growth, trade expansion and other economic goals of Member countries such as the control of inflation;

Recognising that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective spheres of sovereignty of the countries concerned;

Recognising the need for Member countries to give effect to the principles of international law and comity and to use moderation and self-restraint in the interest of co-operation in the field of restrictive business practices;

Recognising that restrictive business practices investigations and proceedings by one Member country may, in certain cases, affect important interests of other Member countries;

Considering therefore that Member countries should co-operate in the implementation of their respective national legislation in order to combat the harmful effects of restrictive business practices;

Considering also that closer co-operation between Member countries is needed to deal effectively with restrictive business practices operated by enterprises situated in Member countries when they affect the interests of one or more other Member countries and have a harmful effect on international trade;

Considering moreover that closer co-operation between Member countries in the form of notification, exchange of information, co-ordination of action, consultation and conciliation, on a fully voluntary basis, should be encouraged, it being understood that such co-operation should not, in any way, be construed to affect the legal positions of Member countries with regard to questions of sovereignty, and in particular, the extra-territorial application of laws concerning restrictive business practices, as may arise;

Recognising the desirability of setting forth procedures by which the Committee can act as a forum for exchanges of views, consultations and conciliation on matters related to restrictive business practices affecting international trade;

Considering that if Member countries find it appropriate to enter into bilateral arrangements for co-operation in the enforcement of national competition laws, they should take into account the present Recommendation and Guiding Principles;

I. RECOMMENDS to the Governments of Member countries that insofar as their laws permit:

A. NOTIFICATION, EXCHANGE OF INFORMATION AND CO-ORDINATION OF ACTION

1. a) When a Member country undertakes under its restrictive business practices laws an investigation or proceeding which may affect important interests of another Member country or countries, it should notify such Member country or countries, if possible in advance, and, in any event, at a time that would facilitate comments or consultations; such advance notification would enable the proceeding Member country while retaining full freedom of ultimate decision to take account of such views as the other Member country may wish to express and of such remedial action as the other Member country may find it feasible to take under its own laws to deal with the restrictive business practices;

   b) Where two or more Member countries proceed against a restrictive business practice in international trade, they should endeavour to co-ordinate their action insofar as appropriate and practicable;

2. Through consultations or otherwise, the Member countries should co-operate in developing or applying mutually satisfactory and beneficial measures for dealing with restrictive business practices in international trade. In this connection, they should supply each other with such relevant information on restrictive business practices as their legitimate interests permit them to disclose; and should allow, subject to appropriate safeguards, including those relating to confidentiality, the disclosure of information to the competent authorities of Member countries by the other parties concerned, whether accomplished unilaterally or in the context of bilateral or multilateral understandings, unless such co-operation or disclosure would be contrary to significant national interests.

B. CONSULTATION AND CONCILIATION

3. a) A Member country which considers that a restrictive business practice investigation or proceeding being conducted by another Member country may affect its important interests should transmit its views on the matter to or request consultation with the other Member country;

   b) Without prejudice to the continuation of its action under its restrictive business practices law and to its full freedom of ultimate decision the Member country so addressed should give full and sympathetic consideration to the views expressed by the requesting country, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the restrictive business practice investigation or proceeding;

4. a) A Member country which considers that one or more enterprises situated in one or more other Member countries are or have been engaged in restrictive business practices of whatever origin that are substantially and adversely affecting its interests, may request consultation with such other Member country or countries recognising that entering into such consultations is without prejudice to any action under its restrictive business practices law and to the full freedom of ultimate decision of the Member countries concerned;

   b) Any Member country so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting country and, in particular, to the nature of the restrictive business practices in question, the enterprises involved and the alleged harmful effects on the interests of the requesting country;

c) The Member country addressed which agrees that enterprises situated in its territory are engaged in restrictive business practices harmful to the interests of the requesting country should attempt to ensure that these enterprises take remedial action, or should itself take whatever remedial action it considers appropriate, including actions under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

5. Without prejudice to any of their rights, the Member countries involved in consultations under paragraphs 3 and 4 above should endeavour to find a mutually acceptable solution in the light of the respective interests involved;

6. In the event of a satisfactory conclusion to the consultations under paragraphs 3 and 4 above, the requesting country, in agreement with, and in the form accepted by, the Member country or countries addressed, should inform the Committee of Experts of Restrictive Business Practices of the nature of the restrictive business practices in question and of the settlement reached;

7. In the event that no satisfactory conclusion can be reached, the Member countries concerned, if they so agree, should consider having recourse to the good offices of the Committee of Experts on Restrictive Business Practices with a view to conciliation. If the Member countries concerned agree to the use of another means of settlement, they should, if they consider it appropriate inform the Committee of such features of the settlement as they can disclose.

II. RECOMMENDS that Member countries take into account the guiding principles set out in the Appendix to this Recommendation.

III. INSTRUCTS the Committee of Experts on Restrictive Business Practices

1. To examine periodically the progress made in the implementation of the present Recommendation and to serve periodically or at the request of a Member country as a forum for exchanges of views on matters related to the Recommendation on the understanding that it will not reach conclusions on the conduct of individual enterprises or governments;

2. To consider the reports submitted by Member countries in accordance with paragraph 6 of Section I above;

3. To consider the requests for conciliation submitted by Member countries in accordance with paragraph 7 of Section I above and to assist, by offering advice or by any other means, in the settlement of the matter between the Member countries concerned;

4. To report to the Council as appropriate on the application of the present Recommendation.

IV. DECIDES that this Recommendation and its Appendix cancel and replace the Recommendation of the Council of 25th September 1979 [C(79)154(Final)].

APPENDIX IX

RECOMMENDATION OF THE COUNCIL [of the OECD]

for co-operation between Member countries in areas of potential conflict between competition and trade policies (adopted by the Council at its 649th meeting on 23rd October 1986)

THE COUNCIL,

Having regard to Article 5 b) of the Convention of the OECD of 14th December 1960;

Having regard to the Decision of the Council of 10th and 11th May 1982 requesting the Committee of Experts on Restrictive Business Practices

> "to examine, in particular, possible longer-term approaches to developing an improved international framework for dealing with problems arising at the frontier of competition and trade policies. After consultation with the Trade Committee, the results of the study should be reported to the Council as soon as possible." [C(82)58(Final)];

Having regard to the Revised Recommendation of the Council concerning co-operation between Member countries on restrictive business practices affecting international trade [c(86)44(Final)];

Having regard to the Report of the Committee of Experts on Restrictive Business Practices on "Competition Policy and International Trade: Their Interaction" derestricted by Council Decision of 7th June 1984 and in particular the conclusions contained in Part I of this Report;

Having regard to the Joint Report of the Committee of Experts on Restrictive Business Practices and the Committee on Consumer Policy proposing an indicative checklist for the assessment of trade policy measures [C(85)32)] and the resolution of the Council of 30th April 1985 calling upon Member governments to undertake, on the basis of the checklist, as systematic and comprehensive an evaluation as possible of proposed trade and trade-related measures as well as of existing measures when the latter are subject to review;

Recognising that government actions or policies which limit or distort trade, in particular, through mechanisms or import restrictions of a discriminatory nature, as well as other trade-related measures, may affect competition in domestic and international markets;

Recognising that the 1984 Communiqué of the Council meeting at Ministerial level on 17th and 18th May 1984 acknowledged the importance of issues arising in relation to both competition and trade policies, such as cartels and voluntary export restraints, which have the effect of inhibiting competition and the proper functioning of markets and called for continued work and improved international co-operation in this area;

Considering that the effective application of competition policy plays a vital role in promoting world trade by ensuring dynamic national markets and encouraging the lowering or reducing of entry barriers to imports;

Considering the need for increased co-operation between competition and trade authorities at the national and international levels to avoid or minimise conflicts between laws, regulations and policies in the field of trade and competition;

On the proposal of the Committee of Experts on Restrictive Business Practices, after consultation with the Trade Committee:

I. RECOMMENDS to the Governments of Member countries:

A. POLICY PRINCIPLES TO STRENGTHEN COMPETITION IN NATIONAL AND INTERNATIONAL MARKETS

a) Trade policy measures affecting competition

1. Member governments should undertake, on the basis of the attached checklist, as systematic and comprehensive an evaluation as possible of proposed trade and trade-related measures as well as of existing measures when the latter are subject to review;

2. In the course of negotiations or discussions concerning export limitation arrangements, governments should take into account the interests of their trading partners and give consideration to the effects of such arrangements on competition in the markets concerned, as well as to the applicability of competition laws;

3. They should respond as positively as possible to requests for consultations by other Member countries which express concern about the impact on competition in their markets of measures referred to in paragraphs 1 and 2 above;

4. Because of the potential effects on competition, governments, when supplying or purchasing goods or services or providing subsidies to enterprises, whether privately owned or under government control, should make these practices and policies as transparent as possible;

5. Care should be exercised that proceedings under laws dealing with unfair trade practices, especially proceedings initiated by enterprises, are not misused for anticompetitive purposes;

b) Application of competition laws to restrictive practices by enterprises affecting international trade

6. When considering action to approve or otherwise exempt export cartels, export limitation arrangements or import cartels from the application of their competition laws, governments should, as far as possible, within existing national laws, take into account the impact of such practices on competition in domestic and foreign markets. Member countries which have not yet done so should consider the possibility of requiring the notification of export cartels, export limitation arrangements and import cartels to competition authorities or similar procedures to obtain more information about the nature and extent of these practices;

7. While recognising that policies designed to allow interfirm co-operation in export trade can stimulate trade flows, governments in general should not encourage the exercise of market power in foreign markets through the use of export cartels. Nor should they encourage other restrictive business practices in export or import markets, e.g., export limitation arrangements and import cartels, which restrain competition in these markets;

8. The government of the country where such cartels or export arrangements exist, should, without prejudice to each government's full freedom of action and according to the procedures of the Revised Council Recommendation concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade, be ready to co-operate within existing national laws with the authorities of other countries in any investigation into possible anticompetitive effects of arrangements located in their countries, recognising the jurisdictional difficulties that sometimes arise when information is sought from abroad or where parties to a restrictive agreement are located abroad;

9. When assessing restrictive business practices of enterprises within relevant markets, the role of imports and the existence of trade barriers should be taken into account.

B. PROCEDURAL ARRANGEMENTS TO AVOID OR MINIMIZE CONFLICTS BETWEEN TRADE AND COMPETITION POLICIES

a) *At the national level*

10. Governments should seek to ensure that competition policy considerations are taken into account in the formulation and implementation of trade policies, including laws dealing with unfair trade practices;

b) *At the international level*

11. Where a Member country considers that the implementation of a trade measure by another Member country of which it has notice from any source would or may significantly affect the application of its competition laws or policies, the Government of the first mentioned Member country may communicate its concerns to the Government of the other Member country;

12. Where a Member country implements or proposes to implement a trade measure which may lead to the application of competition laws in or by another Member country, the first mentioned Member country may notify the other Member country;

13. Member countries should respond as positively as possible to requests they may receive for consultations in relation to such measures and their implications for their competition laws or policies, without prejudice to each government's full freedom of action;

14. Where the governments of the Member countries concerned agree, the consultations could be a matter for report and discussion within the Committee of Experts on Restrictive Business Practices, in close co-operation with the Trade Committee;

II. INSTRUCTS the Committee of Experts on Restrictive Business Practices, in relation to its continuing work in analysing the role of competition policy in strengthening the international trading system and in close co-operation with the Trade Committee on all matters relating to trade policy issues;
   1. to examine periodically developments in the implementation of the provisions set out in this Recommendation;
   2. to report to the Council as appropriate on the implementation of the present Recommendation.

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